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ABSTRACT

The Commission on Civil Rights undertook this study against a background of written complaints and allegations that Mexican Americans in the Southwest were being subjected to discrimination by law enforcement agencies, and in the process of administration of justice. The objective was to find what, if any, factual basis exists for these allegations. The Commission staff attorneys conducted field investigations in 1967-68, in which they interviewed 450 people. Two State Advisory Committee meetings were also held. California Rural Legal Assistance, Inc., was contracted to study service by Mexican Americans on grand juries. In addition, law enforcement agencies in five states were sent questionnaires. The Commission reports that there is widespread evidence that equal protection of the law in the process of administration of justice is being witheld; Mexican Americans are reportedly subject to unduly harsh treatment by law enforcement officers, often arrested on insufficient grounds, and receive physical and verbal abuse and penalties which are considered disproportionately severe. The Commission also finds Mexican Americans are deprived of proper use of bail and of adequate representation by counsel. On grand and petit juries, they are substantially underrepresented and excluded from full participation in law enforcement agencies. The language problem is also held to contribute to difficulties in the equitable administration of justice to Mexican Americans. (JW)

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mexican americans

and the administration of justice in the southwest

United States Commission on Civil Rights

March 1970

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THE U.S. COMMISSION ON CIVIL RIGHTS
Washington, D.C., March 1970

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES
SIRS:

The Commission on Civil Rights presents this report to you pursuant to Public Law 85–315 as amended.

Under authority vested in this Commission by the Civil Rights Act of 1957 as amended, we have appraised allegations that American citizens of Mexican descent in five Southwestern States are being denied equal protection of the law in the administration of justice. We have found, through extensive field investigations during 1967 and 1968, three State Advisory Committee meetings in 1968, and a Commission hearing in 1968, all in that section of the country, that there is widespread evidence that equal protection of the law in the administration of justice is being withheld from Mexican Americans.

Our investigations reveal that Mexican American citizens are subject to unduly harsh treatment by law enforcement officers, that they are often arrested on insufficient grounds, receive physical and verbal abuse, and penalties which are disproportionately severe. We have found them to be deprived of proper use of bail and of adequate representation by counsel. They are substantially underrepresented on grand and petit juries and excluded from full participation in law enforcement agencies, especially in supervisory positions.

Our research has disclosed that the inability to communicate between Spanish-speaking American citizens and English-speaking officials has complicated the problem of administering justice equitably.

We urge your consideration of the facts presented and of the recommendations for corrective action in order to assure that all citizens enjoy equal protection as guaranteed by the Constitution of the United States.

Respectfully yours,

REV. THEODORE M. HESBURGH, C.S.C. *Chairman.*
STEPHEN HORN, *Vice Chairman*
FRANKIE M. FREEMAN
HECTOR P. GARCIA, M.D.*
MAURICE B. MITCHELL
ROBERT S. RANKIN

HOWARD A. GLICKSTEIN, *Staff Director.*

**No longer member of the Commission.*

PREFACE

The U.S. Commission on Civil Rights undertook this study against a background of written complaints and allegations at Commission hearings and at meetings of the Commission's State Advisory Committees that Mexican Americans [1] in the Southwest [2] were being subjected to discrimination by agencies of law enforcement and in the administration of justice.[3] The alleged discrimination included physical and verbal abuse and harassment by law enforcement officers; exclusion from grand and petit juries; improper and discriminatory use of bail; lack of and inadequate representation by counsel; and employment of disproportionately low numbers of Mexican Americans in law enforcement agencies—particularly in higher ranking positions.

The objective of this Commission study was to determine what, if any, factual basis existed for these allegations. In the course of the study, Commission staff attorneys conducted field investigations beginning in the latter part of 1967

[1] The term "Mexican American" refers to persons living in the United States who are themselves of Mexican origin or whose parents or more remote ancestors came to the United States from Mexico or whose antecedents resided in those parts of the Southwestern United States which were once part of the Mexican Nation. This is the most common designation used in the Southwestern States. Others are "Spanish American," "Latin," and "Latin American."

The term "Spanish surnamed or surname" is used in this report where material is from a secondary source which uses this term or is based on the 1960 Census of Population of the United States which used this term to designate persons with Spanish surnames. In the Southwestern States, the vast bulk of this group is Mexican American.

The term "Anglo" is used in this report, as it is in the Southwest, to refer to white persons who are not Mexican American or members of another Spanish surnamed group. The term has no derogatory connotations as used in the Southwest or in this report.

[2] Arizona, California, Colorado, New Mexico, and Texas.

[3] Section 104(a)(2) and (3) of the Civil Rights Act of 1957, (71 Stat. 634), as amended, provide:

> Sec. 104. (a) The Commission shall—
>
> (2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, or national origin, or in the administration of justice;
>
> (3) appraise the laws and policies of the Federal Government with respect to denials of equal protection of the laws under the Constitution because of race, color, religion, or national origin, or in the administration of justice. . . .

Prior reports of the Commission dealing with the administration of justice include *Justice*, Vol. 5, 1961 Statutory Report; *Civil Rights: Interim Report of the U.S. Commission on Civil Rights (1963)*; and *Law Enforcement: A Report on Equal Protection in the South (1965)*. Reports of the Commission's State Advisory Committees which deal with this subject include: *Report on California: Police-Minority Group Relations, 1963*; *Police-Community Relations in Peoria, Illinois (1966)*; *The Administration of Justice in Starr County, Texas (1967)*; *Employment, Administration of Justice, and Health Services in Memphis-Shelby County, Tennessee (1967)*; *Civil Rights in Oakland, California (1967)*.

and continuing in 1968, in which they interviewed approximately 450 persons in Arizona, California, Colorado, New Mexico, and Texas. Persons interviewed included law enforcement officers, probation officers, prosecuting attorneys, judges, public defenders, attorneys in private practice, leaders of Mexican American organizations, and private citizens. Two State Advisory Committee meetings were held in 1968 in New Mexico specifically to gather information for this study. At these meetings 46 persons, including law enforcement offcers, attorneys, and private citizens made statements and were questioned by Committee members and staff. A similar State Advisory Committee meeting was held in California in August 1968, at which 21 persons appeared.

At a Commission hearing held in San Antonio, Texas, in December 1968, which dealt exclusively with the problems of Mexican Americans, sworn testimony was received from 17 witnesses, including private citizens, law enforcement officers, and attorneys, concerning the administration of justice.

The resources of the Commission did not permit a comprehensive survey in response to allegations of exclusion of Mexican Americans from juries. The Commission, however, contracted with the California Rural Legal Assistance, Inc. (CRLA), for a study of service by Mexican Americans on grand juries in selected California counties. The CRLA report, which is printed as an appendix to this report, is summarized in the text.

A questionnaire was mailed to 793 law enforcement agencies in the five States, including nine State agencies, 168 county sheriffs' offices, and 616 municipal police departments seeking information regarding procedures for recruitment and selection of officers, the extent to which Mexican Americans were employed, policies on officer assignment and training, procedures for dealing with complaints against officers, as well as information on police-community relations. The counties selected were those having a minimum of 10 percent Spanish surnamed population and the municipalities selected were municipalities within these counties having a minimum total population of 3,000. A total of 331 questionnaires was returned to the Commission, of which 280 contained sufficient information for tabulation.

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The Commission is grateful to the many private citizens and public officials who gave generously of their time and knowledge to Commission staff members who visited their communities. Without their cooperation, this report could not have been written.

Members of the State Advisory Committees of New Mexico, of California, and of Texas gave unstinting assistance to the Commission staff. They provided it with information concerning local conditions and held closed meetings that enabled citizens of their States to give detailed descriptions of problems in the administration of justice.

The Commission is indebted to the following staff members who participated in the preparation of this report under Project Director Lawrence B. Glick, now Acting General Counsel of the Commission: Robert H. Amidon, J. Richard Avena, Sophie C. Eilperin, Gabriel Guerra-Mondragon, Ivan Levin,* Philip Montez, Everett J. Santos, John Strait,* and John C. Ulfelder. The former Deputy General Counsel, David Rubin,* exercised general supervision over this project.

*No longer member of Commission staff.

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INTRODUCTION

Some vital statistics

The Mexican Americans living in the five States of Arizona, California, Colorado, New Mexico, and Texas constitute the largest minority group in that part of the United States.[1] In 1960 there were three and one-half million Spanish surname persons in those five States, and the current estimate is four million. The largest concentrations of Mexican Americans are in California and Texas, whose Spanish surname populations in 1960 were 1,426,358 and 1,417,810 respectively. Each of the five States has a substantial Spanish surname population, ranging from 9 percent in Colorado to more than 28 percent in New Mexico.[2]

Mexican Americans share with most other ethnic and racial minorities the twin problems of discrimination and poverty. Although this report concentrates on discrimination based on ethnic origin many of the problems discussed—including equal access to bail and counsel—are closely related to the widespread incidence of poverty among Mexican Americans. More than one-half (52 percent) of the rural Spanish surname families of the Southwest and not quite one-third (31 percent) of Spanish surname families living in urban areas had less than $3,000 incomes in 1959.[3] Like other low-income groups, Mexican Americans are overrepresented in unskilled occupations [4] and have a high incidence of unemployment.[5] Their educational attainment falls substantially below that of both other whites and nonwhites in the Southwest.[6]

The poverty of Mexican Americans in the Southwest cannot be attributed to their recent immigrant status. About 85 percent of the persons of Spanish surname in the five Southwestern States were born in the United States and more than half were native-born of native parents. The Mexican American population has grown rapidly in recent years and it is a younger

[1] In 1960, the combined population of those five States was 11.8 percent Spanish surname and 7.1 percent Negro. U.S. Bureau of the Census, *U.S. Census of Population: 1960. Subject Reports. Persons of Spanish Surname.* Final Report PC(2)-1B (1963) [hereinafter cited as Persons of Spanish surname].

[2] The distribution of Spanish surname persons within the five Southwestern States is shown by the following table:

Spanish surname Population—Five Southwestern States, 1960

State	Total State population	Spanish surname population	Percent Spanish surname
California	15,717,204	1,426,358	9.1
Texas	9,579,677	1,417,810	14.8
New Mexico	951,023	269,122	28.3
Arizona	1,302,161	194,356	14.9
Colorado	1,753,947	157,173	9.0

Source: Persons of Spanish surname.

[3] U.S. Dept. of Agriculture, Economic Research Service, Agricultural Economic Report No. 112, Low Income Families in the Spanish Surname Population of the Southwest p. 10-11 (1967). The average income level of the Spanish surname population in 1959 was higher than that of nonwhites in the five Southwestern States. Particularly in New Mexico and Arizona, where there are large concentrations of Indians, median nonwhite incomes were considerably below those of persons of Spanish surname. Nevertheless, average incomes for Spanish surname fell appreciably below that of the total white population and this pattern was general throughout the Southwest. The income pattern is illustrated by the following table taken from the U.S. Census of 1960:

PERCENTAGE OF SPANISH SURNAMED, WHITE NON-SPANISH AND NONWHITE FAMILIES WITH INCOME LESS THAN $1,000 AND $10,000 OR MORE IN FIVE SOUTHWESTERN STATES

	Spanish surname		White Non-Spanish surname		Nonwhite	
	Under $1,000	*$10,000 or Over*	*Under $1,000*	*$10,000 or Over*	*Less than $1,000*	*$10,000 and over*
Arizona	7.2	4.6	3.7	16.9	26.9	2.8
California	4.5	10.8	2.9	23.8	6.3	9.7
Colorado	6.4	4.8	3.2	15.6	6.3	6.5
New Mexico	11.3	4.5	3.6	18.7	28.2	3.4
Texas	13.6	2.7	5.2	14.6	18.0	1.5

U.S. Bureau of the Census. U.S. Census of Population: 1960 Supplementary Reports, Series PC(S1)-55. "Population Characteristics of Selected Ethnic Groups in Five Southwestern States." Table 7.

[4] In 1960, 76 percent of Mexican American males were manual workers, compared to 54 percent of employed white males. Computations from 1960 census data in Heller: *Mexican American Youth: Forgotten Youth at the Crossroads* (1966), p. 12.

[5] In 1960, the unemployment rate for Mexican American urban males was 8.5 compared to 4.5 for Anglo-Americans. Fogel: *Mexican Americans in Southwest Labor Markets*, p. 20 (U.C.L.A. Mexican American Study Project, Advance Report No. 10, 1967).

[6] In 1960, the median number of school years completed was 8.1 years for Mexican Americans over 14 compared to 12.0 years for Anglos and 9.7 for nonwhites in the Southwest. Grebler: *The Schooling Gap: Signs of Progress* (U.C.L.A. Mexican American Study Project, Advance Report No. 7, 1967).

group, on the average, than the Anglo population.[7]

Mexican Americans are becoming increasingly urbanized. In 1960, 79 percent of the Spanish surname population lived in cities.[8] Racial discrimination and economic segregation restrict them in large numbers to identifiable neighborhoods, frequently referred to as "barrios", within these cities.[9]

This bare statistical outline suggests the social context in which Mexican Americans encounter the problems in the administration of justice which are discussed in this report.

A capsule history

A brief historical background of the Mexican American group is helpful in understanding the basis for its separate ethnic identity within the American "melting pot." [10]

The Spanish heritage of the Southwest is older than the American Union. The culture was Spanish and the land a Spanish colony until Mexico gained independence in 1821. As early as 1538, the Spanish had set up a printing press in Mexico City. By 1551, they had established a university in Mexico City. By 1609, the Spanish had left a series of missions along the California coast, established Santa Fe, and ranged as far north as Kansas.

There was little cohesion among the Spanish colonies of North America. Royal power was represented by the Viceroy in Mexico City. Spaniards seldom brought wives or families to the New World. In contrast to the British, who usually emigrated as families, or even as communities, the Spaniards married Indian women. Thus they created a fusion of races known as the *mestizo*, the ethnic wellspring of the Mexican American.

Not until the 19th century, and then only in Texas, was there any appreciable settlement by immigrants from the United States in territory under Mexican sovereignty. The newly independent Mexican Government offered grants of farm and grazing land to encourage American settlers. Yet by 1834 the English-speaking population of Texas probably did not exceed 18,000 persons.

The Mexicans encouraged the Anglo-Americans to settle in the Southwest. When the first Anglo arrived, the Mexican taught him to survive in the desert, to irrigate and cultivate the land, to raise cattle, to use the horse, the lariat, and the western saddle. He gave him a new vocabulary—bronco, stampede, arroyo, mesa, savvy, cowboy. He gave him an architecture suited to the climate and the land.

The very immigration of Americans into Texas which the Mexican encouraged was their undoing. As the American population grew, so did problems between the Mexican and American Governments. A new Mexican Constitution of 1835 swept away many local rights; the Americans joined by some Mexicans revolted and proclaimed the Republic of Texas. In 1845, Texas became the 28th State of the United States. Mexico regarded the admission of Texas to the Union as a hostile act and the two Nations went to war. Hostilities ended following the occupation of Mexico City in 1847 with the treaty of Guadalupe-Hidalgo in 1848. Except for the territory later acquired through The Gadsden Purchase of 1853, all Mexican territory north of the Rio Grande was ceded to the United States. This embraced all or parts of the present States of Colorado, Utah, Nevada, New Mexico, Arizona, Texas, and California.

Mexican citizens living in the area were given the choice of returning to Mexico under no penalty or tax, or of remaining and becoming American citizens automatically after 1 year following the ratification of the treaty. Property rights were to be respected and protected during the interim period and all rights of citizenship were conferred upon those who elected to stay.

The majority of Mexicans north of the Rio Grande chose American citizenship, even though Mexico offered resettlement and land grants. Constitutional guarantees of their rights as United States citizens, continuing political in-

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[7] The median age of Mexican Americans in the Southwest in 1960 was 20, while the median age of Anglo-Americans was 30. Heller, *supra* at 27.

[8] Agricultural Economic Report No. 112, *supra* n. 3.

[9] See, generally, Moore and Mittelbach: *Residential Segregation in the Urban Southwest* (U.C.L.A. Mexican American Study Project, Advance Report No. 4, 1966). This report shows that although residential segregation of Mexican Americans is less severe than of Negroes, it is quite prevalent in southwestern cities.

[10] See generally, Maisel: *They All Chose America* 172–184 (1957); Morison and Commager: *The Growth of the American Republic* v. 1. 13–37, 573–597 (1942); McWilliams: *North From Mexico*, 26, 49–50 (1948); McWilliams: *Brothers Under the Skin*, 119–121; Perrigo: (rev. ed. 1951) *Our Spanish Southwest*, chs. III & IV (1960).

stability in Mexico, and a 300-year history of settlement in the territory ceded to the United States by Mexico were factors affecting the decision.

Soon after the Mexican War the people of the United States swept westward to the Pacific. The growth of cattle and cotton empires in Texas and the discovery of gold in California brought Anglo-Saxons into the Southwest at such a rate that the Mexican Americans were soon outnumbered. Only New Mexico maintained a majority of Mexican Americans for years after becoming a United States territory. The slower pace of American settlement in New Mexico has been attributed, in part, to the extraordinary hostility of Indian tribes there and to the fact that New Mexico contained few apparent economic opportunities. The few Anglos who settled in the territory generally stayed in the urban areas in the southern half, intermarried at the upper economic levels, and made a pleasant and profitable accommodation with the Mexican Americans.

In Texas, however, hostility toward Mexicans, born of the war for Texas independence and the Mexican War, continued. The entire area between the Nueces and the Rio Grande was the scene of lawlessness and countless border raids by Mexicans and Texans alike. An imported slave culture influenced Anglo attitudes. Although Mexicans were not considered in as low a category as Negroes, they were regarded as racially inferior to Anglo-Americans.

To California, meantime, came Anglo-Saxon banking, land, and business practices which were foreign to traditional Spanish ways. Ancient land titles dating from the 16th century were difficult to validate, and the American system of land taxation, which was on an assessed value of the land rather than the value of the produce of the land, all but stripped the original Californians of their lands. Drought and the mining industry helped to destroy the great *rancho* cattle empires, and by the 1860's, five-sixths of the land in southern California was reported to be delinquent in tax payments. More than 40 percent of the land owned by the once wealthy and influential Mexican families went for as little as 25 cents an acre. With the decline of economic influence, Mexican American political power waned.

After 1930 more than 750,000 persons emigrated from Mexico to the Southwestern States.[11] Two principal reasons are cited for this movement. One is the political instability of Mexico during the 1910–1920 revolution. During this period, many thousands came over as refugees. The second is the fact that there has never been an immigration quota system for Mexico. As economic opportunity waxed in the United States, or waned in Mexico, traffic would flow across the border. The rise of cotton cultivation in Texas, the growth of mining in Arizona and agriculture in Colorado, and the rapid expansion of the citrus and vegetable industries in California—all these created enormous demands for cheap labor which the Anglo population could not or would not supply.

Manpower shortages in two World Wars redoubled these demands. Mexican immigrant laborers became the principal work force for California agriculture. Essentially migrant, they increasingly returned at season's end to Los Angeles, making it their home base. The same pattern developed in Texas, with El Paso and San Antonio serving as winter homes for migratory workers.

The cotton boom spread into Arizona during World War I, drawing substantial numbers of Mexicans to that State. When the demand dropped after 1918, some of the workers returned to Mexico. But a considerable number stayed to work in copper mines. By 1930, Mexican Americans represented 25 percent of Arizona's population.[12]

The displacement of Anglo tenant farm workers by cheaper Mexican immigrant labor fed prejudices in Texas. Mexican American children often were sent to separate schools and discrimination was widely practiced. Violence against Mexican citizens and Mexican Americans became so widespread that, in 1922, the Secretary of State warned the Governor of Texas that action would have to be taken to protect Mexicans.

The Mexican American population was extremely hard hit by the nationwide depression of the 1930's. Traditionally ill-paid, with little or no financial reserves, a large number were on relief. Some welfare agencies, notably in the

[11] U.S. Bureau of Census, Historical Statistics of The United States, Colonial Times To 1957, Wash., D.C. (1960) Series C88–114.

[12] U.S. Bureau of Census, *Abstract of the Fifteenth Census of the United States,* 84 (1933).

Los Angeles area, forcibly repatriated Mexicans to get them off relief rolls. Labor unrest was common and there were several instances of strikes by Mexican American agricultural workers in southern California. The use of violence to break up strikes and inhibit union activity was not uncommon.

The problems of the depression years were not the exclusive burden of the Mexican Americans. Mexican Americans undoubtedly did, to some degree, share in the benefits of the labor and welfare programs of the thirties such as TVA, CCC, and AAA; the Fair Labor Standards Act, Social Security Act, and the Wagner Labor Act; and the major advances in farm and housing legislation.

At the same time, the Mexican Americans were not singled out for special benefits or attention during this period. One reason may have been the absence of political organizations and politically active leaders among the Mexican Americans; another, the almost total concentration of the Mexican American population in the Southwestern States.

As the depression eased, some improvements began to appear. In New Mexico, efforts were made to better schools and health services. On a lesser scale, similar advances were begun in California, Arizona, and Colorado.

Texas lagged behind, however. Educational and health levels for Mexican Americans in Texas were the lowest in the Southwest. As late as 1943, the Mexican Government refused to permit Mexican laborers to work in Texas because of discriminatory practices against Mexican nationals and Americans of Mexican ancestry. This led the Governor to establish a Good Neighbor Commission; the State legislature also adopted a resolution which, without naming Mexican Americans, recognized them as Caucasians and entitled them to enjoyment of "white-only" public accommodations.[13]

Mexican American relations with the majority community were jarred in that same year by the notorious "zoot suit" riots which occurred in June in Los Angeles. Anglo sailors claimed to have been attacked by a gang of Mexican American youths dressed in a foppish style of the time which affected heavily padded shoulders, wide lapels, and pegged pants—so-called "zoot" suits. In retaliation for the alleged attack, about 200 sailors, later joined by other servicemen and by civilians, roamed the streets, attacking Mexican Americans.

On June 13, 1943 a special committee appointed by Governor Earl Warren recommended that all participants be punished, whether zoot suiters or military; that the community be made safe for all, regardless of race; that no group be allowed to act as vigilantes; and that the large number of Mexican American youths arrested created a distorted picture, since juvenile delinquency was lower in that group than any other group in the community. The committee also recommended that racial and ethnic data be deleted from arrest information, that the press show more cooperation, that law enforcement agencies provide special training for officers dealing with minority groups, that recreational facilities in minority areas be increased, and that discriminaton in public facilities be abolished.

World War II had a multiple impact on Mexican Americans. Thousands of Mexican American men in military service were exposed to attitudes, mores, and ways of life which differed from those of the Southwest. After the war the G.I. bill offered Mexican American veterans educational training opportunities which they otherwise would not have received.

The period since the end of World War II has also seen the growth of political awareness and participation by Mexican Americans. Such organizations as the Political Association of Spanish Organizations (PASO) in Texas; the Mexican American Political Association (MAPA) in California; and various branches of the National G.I. Forum (Mexican American veterans organization) have successfully promoted the candidacy of Mexican Americans in Texas, California, and New Mexico.

Although these political movements have contributed to progress in obtaining equal opportunity for Mexican Americans, a number of major issues remain unresolved. Among these is the ever-present problem of Mexican American relations with law enforcement agencies, which constitutes the basis for this report.

[13] State of Texas House Concurrent Resolution No. 105, approved May 6, 1943.

PART I. LAW ENFORCEMENT

Chapter 1

Treatment of Mexican Americans

Complaints of excessive and discriminatory use of force

"A peace officer in making an arrest has the right only to use that amount of force reasonably necessary to effect the arrest and to detain the prisoner. . . . All peace officers should remember that generally the sole purpose of an arrest is to bring the alleged culprit before a court of law and not for the purpose of giving any peace officer the opportunity of wreaking the public's or his personal vengeance upon the prisoner." [1]

This rule, from the Texas Law Enforcement Officers' "Handbook", reflects the law of most American jurisdictions, including Arizona, California, Colorado, and New Mexico, the other Southwestern States included in this study.[2] Despite these official State policies, the Commission and its staff during the course of the present study received numerous complaints of excessive force by law enforcement officers against Mexican Americans. Many of the complainants believed they would not have been subjected to such treatment had they been Anglos.

The most extreme allegations were made by residents of small towns where, according to many Mexican Americans, such incidents are not unusual. Matt Garcia, a Mexican American lawyer who has practiced for many years in San Antonio, Texas and other cities in south and west Texas, testified at the Commission's San Antonio hearing in December 1968. He related the following incident involving a Mexican American in south Texas which he alleged occurred in that area in 1965: [3]

> . . . a man went to the courthouse to inquire as to his father's case. He was told that he was going to be tried at 7. So he went to find out whether or not the man was going to be tried at 7 a.m. or 7 p.m. And this inquiry was made of the justice of the peace.
>
> When this inquiry was made, the sheriff walked in and said: 'What do you want, Mexican?' Of course they don't call you 'Mexican' . . . they call you 'Meskin,' and the man said: 'Well, this is none of your concern,' and they proceed to pistol-whip him. Both the sheriff and the judge. The man had a very severe gash across his scalp. He was beaten about the face, and he was dragged from the court. . . . And he kept yelling that he was going to die, that he was bleeding to death.[4]

Garcia testified that the victim was hospitalized because of the injuries resulting from the beating and that no criminal charges were filed against him.[5]

Another Mexican American lawyer testifying at the hearing stated that conditions in south Texas have not changed during the past few years and that law enforcement officials are determined to suppress any attempts by Mexican Americans to challenge abuses of their authority:

> And they think that they have a right to. They think that laws are made for them to use as they like. And I honestly think that these people believe that they have a right to expect the Mexican American to take everything that they dish out.
>
> And when you stand up and speak for your rights . . . they think that you're infringing on their rights.[6]

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[1] Handbook for Texas Law Enforcement Officers, prepared by the Texas Commission on Law Enforcement Procedures (1967) at 25.

[2] See e.g., Ariz. Rev'd. Stats., R. Crim. Proc. 14(b) (1956); Cal. Pen. C. §§ 835, 843 (West Cum. Supp. 1968); Tex. Stats. Ann. § 15.24 (1966). New Mexico and Colorado do not specify by statute that the force used shall be reasonable. However, the courts have applied the same rule in those jurisdictions. *Colorado v. Hutchinson*, 9 F. 275 (8th Cir. 1925) (Colorado); *Mead v. O'Connor*, 66 N. M. 170, 344 P2d 478 (1959) (New Mexico); *Padilla v. Chavez*, 62 N. M. 170, 306 P2d 1094 (1957) (New Mexico); Restatement (Second) Torts § 132.

[3] Mr. Garcia was asked not to disclose names and places involved in this incident because the officials involved were not present to rebut the statement made about them.

[4] *Hearing Before the U.S. Commission on Civil Rights, San Antonio, Tex., Dec. 9–14, 1968* at 669–70 [hereinafter cited as San Antonio Hearing].

[5] The Department of Justice investigated this case on the basis of the victim's complaint. The sheriff stated that the victim became "loud and abusive" in the office of the justice of the peace, called him a coward and refused to leave. The sheriff admitted poking the victim in the stomach with his pistol. This led to a fight in which the sheriff and the justice of the peace admittedly beat the victim with a pistol on the head. A local doctor confirmed that the victim suffered lacerations on the head and that the sheriff suffered cuts and bruises. The Department of Justice decided that this case lacked prosecutive merit because the victim's statements were uncorroborated.

[6] San Antonio Hearing at 672.

Alfred Figueroa, a businessman and a lifelong resident of Blythe, California (population about 20 percent Mexican American) told the Commission's California State Advisory Committee of being beaten by the local police in 1963.[7] According to Figueroa, he was having a soft drink in a bar when three police officers told him to come outside to talk to them. At that time, Figueroa said, there were many migrant farm workers in town. Believing he was being mistaken for one of them, he told the policemen that "they were barking up the wrong tree." When Figueroa refused to leave the bar, he stated, one of the policemen said that he was "just another smart Mexican," threw him on the floor, kicked him and handcuffed him. Figueroa claimed that he made no move to resist the arrest, yet the officers threw him in a car and when he could not get in because of the narrowness of the door, slugged him and kicked him inside. By this time, according to Figueroa, a great crowd had gathered because he was well known in town.

He gave the following account of the incident to the Committee:

> In the process of trying to get me in they kicked me and kicked me and kicked me and I would get up and I said why are you doing this to me . . . and they would say: 'Get in there, you damn Mexican'.[8]

Figueroa was taken to jail and charged with drunkenness. He was acquitted of this charge. With great difficulty, he found a lawyer who was willing to bring a civil action against the police officers and obtained recovery against one of the officers.[9]

Figueroa stated that he and his brothers have been subjected to constant harassment at the hands of the local police. According to a complaint filed in April 1968 by his brother, Gilbert, against law enforcement officials of the city of Blythe and the county of Riverside, such an incident occurred in October 1967 in Riverside County. The complaint[10] alleges that two off-duty Blythe plainclothesmen assaulted Gilbert Figueroa and falsely arrested him "because he is a Mexican American and . . . one of the Figueroa brothers whose opposition to police malpractice and . . . activities in urging and aiding Mexican Americans and other minority persons to assert their rights are well known in the Blythe area."[11] The complaint further alleges that two Riverside County Sheriff's officers, who were on duty, refused to protect the plaintiff from the Blythe plainclothesmen when he asked them to do so and that the Blythe Chief of Police refused to let the plaintiff lodge a complaint against these men.[12]

At the Commission's San Antonio hearing, Mrs. Frances Alvarez and Mrs. Margarita Contreras testified that on the evening of June 9, 1968, at the Pecos Memorial Hospital in Pecos, Texas, Officer Floyd South of the Texas State Highway Patrol struck both of them, causing a serious head injury to Mrs. Alvarez.[13] The alleged assault arose out of an argument with Officer South, after he had accused Mrs. Contreras' 16 year-old son, who had been in an automobile accident, of smoking marijuana. According to Mrs. Alvarez, [the young man's aunt] she and her husband and the boy's parents became very upset at this allegation and chal-

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[7] Closed meeting held by the California State Advisory Committee to the U.S. Commission on Civil Rights in Los Angeles, Calif. on Aug. 17, 1968, stenographic transcript at 264–301 (hereinafter cited as Los Angeles T.).

[8] Los Angeles T. at 268.

[9] *Figueroa v. Mackey* (Blythe) Riverside Superior Ct., April 1967 jury verdict for plaintiff $750 (reported in Civil Liberties Docket, Vol. XIII, 1967–1968, p. 76, published by Ann F. Ginger, Berkeley, California).

[10] *Figueroa v. Krupp*, Civil No. 68–648–AAH (C. D. Cal., filed Apr. 22, 1968). This is a suit under 42 U.S.C. 1981, 1983, 1985–89 for violation of civil rights, assault, and false imprisonment against the city of Blythe and the county of Riverside, as employers of the individual defendant police officers and against responsible officials of the city and county. The complaint was dismissed against all the defendants except the individual defendant law enforcement officers. An appeal has been taken from those orders. The action against the remaining defendants has not yet been set for trial.

[11] *Figueroa v. Krupp, Id.*, complaint, para. 19.

[12] *Id.*

[13] San Antonio Hearing at 686–95. Two other persons, Mrs. Miriam Starley, a night supervisor, and Slim Heath, the father of a boy being treated at the hospital that evening, were present and observed part of this incident. *Id.*

lenged Officer South to prove that the boy was an addict. Officer South denied that he had made the accusation and when the boy's mother insisted, he allegedly slapped her, hit Mr. Contreras, and struck Mrs. Alvarez with his fists. Mrs. Joan Kerr, a nurse who was on duty at the hospital at the time of this incident, testified at the hearing that she heard a woman scream outside the hospital and ran out to investigate:

> I saw [Officer South] hit Mrs. Contreras. And Mrs. Alvarez was bleeding profusely from her forehead . . . the four of them were huddled together and Mr. South . . . kept motioning his hands and telling them: 'Come on, come on, who wants to be next?' [14]

Officer South, who testified at the hearing, denied that he struck Mrs. Alvarez or Mrs. Contreras. He claimed that Mrs. Contreras, Mr. Contreras, and Mr. Alvarez "jumped on him" outside the hospital and that he hit Mr. Contreras once in self defense. When asked how Mrs. Alvarez received her wound, he replied that he had "no idea." [15]

Allegations of unjustified use of force by police against Mexican Americans also were voiced in interviews in major southwestern cities. Howard Rosenberg, general counsel of the Legal Aid Society of Denver, Colorado, said that some Denver policemen abuse Mexican Americans and treat them with contempt.[16] As an example, he gave the following account of the experience of an elderly Mexican American client: When the client's automobile steering wheel became loose one evening he stopped and requested the assistance of a policeman. The policeman pulled alongside but instead of coming over to the client's car, told him to come into the police car. When the client explained what had happened, the officer said that there was nothing wrong with the car, that the man was just drunk. The client denied this. During the discussion, the officer lit a cigarette and the client asked if he could have one. "There are no cigarettes for you, Mexican," the officer allegedly replied. When the client, who was offended, tried to walk away, he was arrested and jailed. At the station, Rosenberg stated, the client was insulted. In the jail he reportedly was put into the "drunk tank" and received a broken jaw from a beating administered by a deputy sheriff.

The client was tried and convicted of drunkenness. His testimony and that of the arresting officer conflicted and the judge chose to believe the latter. Rosenberg believes the client was not drunk and had a good case against the Denver police, but the client became so discouraged by his conviction, which he appealed unsuccessfully, that he was unwilling to bring a civil action based on his arrest and mistreatment.[17]

Jesus Dominguez, a resident of Los Angeles, told a meeting of three Commissioners held during the week of the Commission's San Antonio hearing of being beaten by Los Angeles police officers in September 1968.[18] Dominguez said he went to a dance in response to a call from his children, who had been at the dance and had been arrested. When he asked one of the officers present how he could find his children, the officer answered, according to Dominguez, "We don't have any time for you Mexicans". Dominguez then told the Commissioners:

> So I got a little excited and said, 'Why you dirty no-good cops,' . . . And the policeman on the righthand side, he immediately got out and opened the door and said, 'Get in'.
>
> I said, 'For what?' And he said, 'Get in'. And I said, 'For what?' And he said, 'You better get in or I'll crack your skull'.[19]

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[14] San Antonio Hearing at 690.

[15] *Id.* at 709. The local grand jury, when presented with these facts, failed to return an indictment against Officer South (see discussion below, p. 45). A complaint was made to the Department of Justice of possible violation of 18 U.S.C. 242, the principal Federal criminal statute protecting citizens against violations of their civil rights by law enforcement officers. The statute provides that:

> Whoever, under color of any law, statute, ordinance, regulation or custom, willfully subjects any inhabitant of any State . . . to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year or both and if death results shall be subject to imprisonment for any term of years or for life.

As of Mar. 31, 1969, the complaint was under investigation by the Department of Justice.

[16] Interview with Howard Rosenberg, Oct. 16, 1967.

[17] Telephone interview with Howard Rosenberg, Feb. 27, 1969. According to Rosenberg, the client filed a complaint about his treatment with the Denver Police Department but without any results. On Mar. 31, 1969, a Commission staff member interviewed George Seaton, chief of police of Denver, to give him an opportunity to investigate this incident. (Mr. Seaton promised to write to the Commission concerning the incident. As of publication of this report, he had not responded.)

[18] Special Meeting of the U.S. Commission on Civil Rights, San Antonio, Tex., Dec. 11, 1968 (hereinafter cited as San Antonio, special meeting T.). The witnesses at this special meeting were not under oath.

[19] San Antonio, special meeting T. at 6.

Dominguez said that he made attempts to resist arrest with a small iron bar he carried for protection, but was soon overpowered by several officers, taken to a park and so severely beaten by the officers as to require several successive hospitalizations for his injuries.

The Department of Justice investigated this case on the basis of the Commission's complaint and determined that it did not warrant Federal prosecution. According to the FBI reports on the investigation, the five officers who arrested Mr. Dominguez claimed that his injuries were the result of the force the officers had to use to arrest him.[20] Mr. Dominguez was charged with assaulting an officer; his two trials, in June and October 1969, resulted in a hung jury.[21]

Other allegations that law enforcement officers used excessive force in arresting Mexican Americans were made to the Commission. Although the law enforcement officers involved in these alleged incidents did not show overt bias, Mexican Americans described the incidents as examples of what they alleged to be the common use of excessive force by officers in making arrests of Mexican Americans.

At the previously mentioned special meeting of the Commissioners in San Antonio,[22] for example, Mrs. Socorro Barba, who lives in a predominantly Mexican American neighborhood in Los Angeles, alleged that her 13 year-old son Salvador was severely beaten by three Los Angeles policemen in connection with an arrest for attempted burglary on November 9, 1968.

According to Mrs. Barba, the incident occurred as follows: At about 1:30 in the morning of November 9, an officer called to tell her that her son had been arrested at 10:20 the preceding evening and had fallen and hurt his head. Mrs. Barba went to pick up the boy, who said he had been beaten. The officers, Mrs. Barba said, told her that Salvador had a small cut and not to worry. As a result, she did not believe her son at first. On the morning after the arrest, however, the boy had to be taken to the hospital because he was bleeding profusely from his head. At the hospital it was discovered that the boy already had 40 stitches in his head which were put in the previous night at the same hospital, where the officers had taken the boy between his arrest and their call to Mrs. Barba. According to her son and several other witnesses, the stitches were required because of the beating he received from the officers. Salvador Barba has been charged with burglary.

Mrs. Barba's complaint, like Mr. Dominguez' was referred to the Department of Justice. The Department determined that Federal prosecution was not warranted by the evidence uncovered by the investigation. (However in neither case did the Department specify the grounds on which this decision was based). The Federal Bureau of Investigation's reports on the Barba case were based largely on the Los Angeles Police Department's (L.A.P.D.) own investigation of Mrs. Barba's complaint. This investigative report contained the statements of several doctors who treated Salvador Barba and were of the opinion that his injuries were not inflicted by beatings. The L.A.P.D. investigation also contained the statements of several witnesses named by Mrs. Barba, who told the local police investigators (contrary to what they reportedly told Mrs. Barba) that they did not see or hear the incident.[23]

Paul Phillips, an attorney in Albuquerque, stated that in March of 1967 he saw from his office window a policeman and a man in civilian clothes chasing a young boy whom they had caught in a parking lot. Phillips said that the man in civilian clothes "dragged the kid down and the cop jumped on his back and started riding piggy-back on him and started to push his head against the pavement."[24] Phillips reported that he was so outraged by what seemed to be the use of excessive force that he ran down to the street to investigate the incident. He said he followed the arresting officer to the precinct and complained about the officer's treatment of the youth. According to Phillips, the victim, a 16-year-old Mexican American accused of shoplifting who had tried to run away from the officers, claimed that his head had been smashed against the pavement seven times. Phillips stated that the youth's family did not wish to

[20] Copy of arrest report in Department's investigative files. For a critique of the investigation in this case, see chap. 4 at 30.

[21] Telephone interview with Jesus Dominguez, Oct. 30, 1969.

[22] San Antonio, special meeting T. at 2–26.

[23] Investigative files, Department of Justice. For a critique of the investigation in this case, see chap. 4 at 30.

[24] Closed meeting of the New Mexico State Advisory Committee to the U.S. Commission on Civil Rights in Albuquerque, N. Mex., May 4, 1968, stenographic transcript at 41 (hereinafter cited as Albuquerque T.).

pursue the matter and that the police said Phillips could not have seen what had happened from a fifth floor office window.[25] Police investigation of Phillips' complaint exonerated the officer involved.[26]

Some of the incidents reported to the Commission had resulted in death. These generally involved resistance to arrest or an attempt to escape from police custody. Mexican Americans have asserted that the police officers would not have used deadly force against an Anglo under similar circumstances.

One such incident occurred in Stanton, California. According to one of the leaders of the local Mexican American community, two young men en route home late one night were stopped, questioned, and searched by a police officer. The officer reportedly assigned no reason for his actions but said he was going to take them to jail because they lacked identification. At that point, it was reported, one of the young men, aged 18, started to run away from the officer, whereupon a cruising police car stopped and an officer who saw the youth running fired his revolver, killing the young man. The officer was prosecuted on a charge of involuntary manslaughter, but the case was dismissed after the prosecution presented its case.[27]

A similar incident occurred in Alpine, Texas in June 1968. According to reports of local residents, a police officer was chasing Henry Ramos, a 16-year-old Mexican American driving a car, in order to get information about his brother. The officer, it was reported, had a reputation for being rough and abusive and had been accused in the past of harassing Ramos, his brother, and other Mexican Americans. The chase ended when the boy stopped his car and fled on foot and the pursuing officer shot him once—fatally. A police investigation resulted in the filing of a charge of murder without malice against the officer and an indictment by the local grand jury.[28]

The Commission heard many other allegations that law enforcement officers in the Southwest use excessive force against Mexican Americans. There were other allegations of brutality in the cities previously mentioned—Los Angeles,[29] Denver,[30] and Albuquerque [31]—as well as in other major cities—including Tucson, Arizona,[32] San Antonio, Texas,[33] El Paso, Texas,[34] Austin, Texas,[35] and small towns visited in the Southwest.[36]

Although the Commission cannot establish the validity of each of these complaints—this is the function of a court—their prevalence suggests the existence of a serious problem. This conclusion is confirmed by the fact that between January 1, 1965 and March 31, 1969 the Department of Justice received 256 complaints of police abuse, mostly of a serious nature, from Spanish surname persons in the five Southwestern States.[37] The conclusion also is supported by the receipt of 174 complaints of serious police brutality against Mexican Americans by the American Civil Liberties Union of Southern California during the past 2 years.[38]

Unequal treatment of juveniles

The Commission received many complaints alleging discriminatory treatment of Mexican

[25] Mr. Phillips expressed the opinion that the Albuquerque Police Department is unable to take care of the "mildest upset" in a reasonable way. Albuquerque T. at 40. As an example of the common use of excessive force, he cited an incident that occurred in 1967 which involved a dispute between two families in which two women and the children of one of the women were severely beaten by the police. One of the women was part Mexican. Although Mr. Phillips was not sure that her nationality played a role, an investigation of the incident by a Subcommittee of the Commission's New Mexico State Advisory Committee convinced the Chairman of the Committee that there were racial overtones in the incident. Albuquerque T. at 46 and interview with Gene Hill, Feb. 5, 1968.

[26] Albuquerque Journal, Apr. 19, 1967.

[27] Los Angeles T. at 302–310. The officer involved resigned from the force because of public pressure (*id.*). A complaint was made to the Department of Justice and as of Mar. 31, 1969, was under investigation for possible violations of 18 U.S.C. 242. Investigative files of the Department of Justice.

[28] Interviews in Alpine, Texas, Sept. 8–13, 1968. As of Aug. 19, 1969, the case had not come to trial. Telephone conversation with Felix McGaugh, County Judge, Brewster County, Texas.

[29] Los Angeles T. at 86–89, 133–135.

[30] Interview with James R. Carrigan, Nov. 13, 1967.

[31] Albuquerque T. at 140–45.

[32] Interview with Alex Sanchez, Mar. 7, 1968.

[33] Interview with a resident who did not wish to be identified, Oct. 10, 1968. Other confidential interviews shall be hereinafter referred to as staff interview.

[34] Interview with Clark Knowlton, June 1968.

[35] Interview with Mario Obledo, Apr. 8, 1968.

[36] Interviews with Natividad Fuentes, Uvalde, Tex., Apr. 12, 1968 (discussed in chap. 4, *infra*); Jose Val Vede, Fort Sumner, N. Mex., Feb. 28, 1968; Gilbert Garcia, Roswell, N. Mex., Feb. 11, 1968.

[37] Commission staff review of Department of Justice investigative files. Of these complaints, 149 concerned law enforcement officials in Texas. The geographical distribution of the rest of the complaints was as follows: 8 from Arizona, 44 from California, 14 from Colorado, and 41 from New Mexico.

[38] Institute of Modern Legal Thought, *Law Enforcement: The Matter of Redress*, a report of the American Civil Liberties Union of Southern California (1969) at 55 (hereinafter cited as ACLU Report).

American juveniles by law enforcement officers. One of the most common was that Anglo juvenile offenders were released without charge to the custody of their parents, while Mexican American youths were charged with offenses and jailed or sent to a reformatory.

For example, a counselor for the State employment office in Roswell, New Mexico, told the Commission's New Mexico State Advisory Committee:

> I know that when we were brought up, there were young people in Roswell who were friends of ours and the boys would get into minor skirmishes, breaking up signs or something like this. They would be taken to the police department, picked up, but they would be released to the custody of their parents. As far as we know, no charges were ever made against these people. This is why, I think, I was very shocked when I became involved in working with these [Mexican American] young people, especially with my young friends, and found that charges were made against them, such as stealing cantaloupes out of a farmer's field, curfew violations, being truant from school and things like this. These would all be on record and they all have quite extensive juvenile records.
>
> Among the Anglo people I work with, these just aren't done. I don't think Anglo children are this much better. I think this just happens, and this is the way it is.[39]

Arthur Esquibel, the former chief of police of Las Vegas, New Mexico told the Committee that when he was chief between 1962 and 1966, local officials proposed to give two trouble-making young gangs in his community—one Mexican American and one Anglo—widely differing types of punishment. The community was concerned by acts of vandalism, believed to be the work of the Mexican American gang. Asked to investigate, the police found that both gangs were involved, apparently competing to see which gang could be the most destructive. At first Esquibel had difficulty persuading the community that there actually was an Anglo gang in addition to the Mexican American gang. Subsequently, local public officials called a meeting of the parents and members of both gangs and proposed that since most of the Mexican American boys had arrest records, charges should be filed against them. The punishment proposed for the Anglo boys was that they be disciplined in school by being forbidden to play basketball for 3 weeks.

Esquibel, as chief of police, insisted that, since all of the boys had committed the same offenses, all or none should be charged. As a result, no charges were brought against any of the gang members.[40]

Mrs. Jesusita Vigil of Silver City, New Mexico, stated that in February 1968, her 16-year-old son was arrested for truancy and placed in jail. The school principal and the probation officer reportedly offered the boy his choice of going to the State reformatory, joining the Job Corps, or leaving the State.[41] Willie T. Gonzales, a resident of Silver City, commented on this incident:

> They do this for Spanish-speaking people, they give them this kind of choices. To Anglos, it is just a matter of going to their parents and solving this between them. That is the way it's done for one group and done differently for another.[42]

It was alleged that Mexican American parents often are not notified when their children are arrested. Mrs. Vigil said that after her son had been arrested for truancy and jailed, 2 days elapsed before she could find out where he was.[43] Mrs. Amelia Zamora, a resident of Portales, New Mexico, claimed she was never notified when her son was arrested and jailed for truancy.[44] Carleton Crane, a former policeman, said that in Portales, parents of Mexican American children are seldom informed that their children have been arrested. A young Mexican American from Portales reportedly was going to the movies with his mother when he heard his brother yell down from the city jail that he had been arrested. This was the first notification the family had of the arrest which apparently had occurred a day earlier.[45]

Discriminatory treatment of young Mexican Americans was alleged in other areas of the Southwest. Mose Trujillo, under sheriff of Denver County cited the case of a young Mexican

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[39] Closed meeting of the New Mexico State Advisory Committee to the U.S. Commission on Civil Rights in Roswell, N. Mex. Apr. 20, 1968, stenographic transcript at 108 (hereinafter cited as Roswell T.).

[40] Albuquerque T. at 131–34.

[41] Roswell T. at 32.

[42] *Id.* at 33.

[43] *Id.* at 31.

[44] Interview with Amelia Zamora, Feb, 28, 1968.

[45] Roswell T. at 133. Lack of notification may be attributable in some areas to the view of law enforcement officials that Mexican American parents do not care about their children. Jerry Thomas, chief of police of Center, Colorado, and Richard Walker, a local patrolman, argued that "Spanish" parents "spend money on a six pack or a bottle of wine rather than buy cookies for their kids." Interview with Jerry Thomas, Dec. 14, 1967.

American who had just bought a BB gun and was arrested upon leaving the store for illegal possession of the weapon. He contrasted this incident with another in which a young Anglo, who had been shooting at windows with his BB gun, was sent home by the police.[46] Minori Yasui, director of the Denver Commission on Community Relations, said that different treatment of Anglo and Mexican American youths is common in Denver. Yasui was concerned that, as a result of unwarranted police action against them, many Mexican American juveniles build up arrest records which jeopardize their employment prospects.[47]

Mike Gonsalez, an attorney in Del Rio, Texas, stated that there was unequal treatment of Mexican American and Anglo youths in south Texas. According to Gonsalez, some young Mexican Americans, recently caught breaking into a beer distributors' store in a small town in Texas, were arrested and charged with burglary. At about the same time some Anglo youths, according to Gonsalez, also broke into a store, stole some beer, and held a drunken orgy which resulted in their arrest. According to Gonsalez, because they were the sons and daughters of prominent Anglo members of the community, the incidents were not reported in the local newspapers and the young people were not charged.[48]

Other forms of discriminatory treatment

A common complaint was that Mexican Americans are treated with less respect and less regard for their rights than Anglos. These allegations related largely to the manner and tone of voice used by law enforcement officers in approaching Mexican Americans, the treatment by law enforcement officers of Mexican American traffic offenders, and the frequent stopping of Mexican Americans on suspicion.

Lack of courtesy—A national survey of police-community relations prepared by Michigan State University for the President's Commission on Law Enforcement uncovered widespread complaints by both Spanish and black Americans in every city surveyed concerning verbal abuse, discourtesy, and the use of "trigger" words.[49] In the course of this study, the Commission also heard many reports that police treat Mexican Americans rudely and disrespectfully.

Participants in a meeting at the North Side Action Center in Denver at which a Commission staff member was present, stated that law enforcement officers commonly indulged in verbal abuse of Mexican Americans by insult and threats. Such treatment often has the effect of escalating a minor incident into an argument between a policeman and Mexican American, resulting in an arrest, a proliferation of charges, and, at times, violence.[50]

Rev. Charles R. White, program director of a settlement house in a Mexican American neighborhood in Los Angeles, compared police enforcement of the curfew around the settlement house and his recollection of police action at curfew hour in his own [Anglo] community.[51] According to Reverend White, if Mexican American youths are standing on the sidewalks near the settlement house at 9:30 to 10 o'clock, the police stop, tell them in forceful terms to leave, and threaten them with arrest if they do not clear the street by 11 o'clock. Reverend White's own recollection of police enforcement of the curfew in his youth was quite different.

> Now, my experience growing up in an Anglo community is that when it got close to curfew hour, they would come by and they would kind of motion out of their windshield, you know, and you knew what that small motion meant.[52]

He added that young people in East Los Angeles were afraid to hold a dance at his settlement house for fear the police would break it up and arrest them.[53]

Mexican Americans also suffer disproportionately from the tendency of police to be less courteous to poor people than to those in higher

[46] Interview with Mose Trujillo, Nov. 13, 1967.

[47] Interview with Minori Yasui, Oct. 16, 1967. Interviews with Peter Mirelez, Nov. 14, 1967, and Dennis Santistevan, Dec. 11, 1967.

[48] Interview with Mike Gonsalez, Dec. 3, 1968. Also, San Antonio Hearing at 667–68. Mr. Gonsalez heard about this case from a Mexican American deputy sheriff in the town who did not wish to be identified. Many of the complaints regarding the use of excessive force, such as those described above, involved juveniles as victims. There were also numerous complaints from juveniles about being stopped by the police on "suspicion" (see below, pp. 10–11).

[49] Galvin and Radelet: *A National Survey of Police and Community Relations* (1967) a report prepared for the President's Commission on Law Enforcement and The Administration of Justice under a grant to Michigan State University.

[50] Group interview, Nov. 14, 1967.

[51] Los Angeles, Calif., Municipal Code § 45.038 requires young people under 17 to be off the streets by 10 p.m.

[52] Los Angeles T. at 30–31.

[53] Los Angeles T. at 32.

economic brackets.[54] Ray Anaya, sheriff of Carlsbad, New Mexico, told the New Mexico State Advisory Committee that a double standard exists in his jurisdiction:

> For instance, an officer goes [to] a house of a man who has a long police record, knocks on the door, the wife opens the door, and he goes in the house. If that were in another place in town, Riverside Drive, I am sure it would not happen because Riverside Drive in Carlsbad is considered the higher class section. This happens in the south part of town, where the Spanish American and colored people live and some Anglos.[55]

A report on San Diego's police-community relations, prepared by the University of California, quotes a resident of San Diego as saying that in the predominantly Negro and Spanish American areas of town:

> If a policeman knocks on a door and receives no immediate response, even though he may hear someone inside, he would kick the door down and enter. Yet police officers in La Jolla [a predominantly Anglo community in San Diego County] go to the back door when they are on official business.[56]

In San Antonio, Mexican American youths complained that some officers address them as "Pachuco" or say "Hey, punk, come here", and that they are arrested if they protest.[57] One young man said, "There is always something they can stick you with if they want." [58] Some Mexican American high school students in San Antonio alleged that while they are on their way home from school, officers tell them to tuck in their shirt tails and to stop wearing pointed shoes.[59]

Mr. Rosenberg, of the Denver Legal Aid Society, reported that a young Mexican American was stopped by a Denver policeman as he was escorting a blonde Anglo girl home from a party. The girl was driving, Mr. Rosenberg stated, and the officer told her she was speeding. The policeman then asked her escort: "Mexican, what are you doing with a white woman?" and arrested him. The young man was charged with four traffic violations which were dismissed in court since he was not driving the car. According to Mr. Rosenberg, the officer called the girl's mother to tell her that her daughter was out with a "Mexican".[60]

Inequalities in treatment of traffic violations—Several persons, including some law enforcement officials, charged that Mexican Americans are treated more severely than Anglos for traffic violations. Such allegations were received from residents of Arizona, New Mexico, California, and Colorado.

The chief of police of Tucson, Arizona reported that Anglo police recruits who had just completed training duty with regular officers observed that "a Mexican American was much more likely to the ticketed for a traffic violation than an Anglo." [61] The chief stated that he believed these observations to be accurate and was endeavoring to correct the situation. As of March 1968, traffic tickets in Tucson allegedly carried racial designations. These included "M" for Mexican until a protest was made by a Mexican American city councilman, resulting in the inclusion of Mexican Americans in the group labeled "Caucasian." [62]

Other such observations came from Philip Flores, a high school student in Las Cruces, New Mexico, who said that many Mexican American youths believe the police are more severe with them than with others in connection with motor

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[54] Los Angeles T. at 163.

[55] Roswell T. at 150.

[56] Lohman and Misner: *The Police and the Community* (1966) Vol. 1. A report prepared for the President's Commission on Law Enforcement and the Administration of Justice under a grant to the University of California (Berkeley) at 82 (hereinafter cited as the Lohman report).

[57] Interview with six young men who did not wish to be identified, because of their fear of the police, Dec. 10, 1968. A Mexican American from San Jose, Calif. also suggested that policemen provoke defiant behavior leading to arrests:

> The questions are such that they want you to defy them . . . . As a result, they are able to charge you with resisting [arrest] and even attack you.

Interviews conducted by the University of California's Western Center on Law and Poverty for its study "Sentencing of Mexican Americans" (1969), prepared for the Commission under contract, unpublished manuscript at 163 (hereinafter cited as Western Center Study).

[58] *Id.* Councilman Thomas Bradley of Los Angeles, a former police lieutenant, commented on the large number of "false arrests" in Negro and Mexican American areas, where the only charge is resisting arrest or assaulting an officer:

> . . . this happens, I would say almost entirely because somebody resists the abuse of an officer or demands to know why the officer is stopping the person or speaking out, in interference, and saying, 'I know my constitutional rights!' Well, that's the worst mistake they can make. This brings about some kind of reaction when they are being arrested, and if they resist in any way; they then charge battery against the officers. . . . Los Angeles T. at 108.

See also, *Task Force Report: The Police,* The President's Commission on Law Enforcement and Administration of Justice (1967) at 179–80; Chevigny, *Police Power* (1968).

[59] Interview with Roy Valdez and group of young men from West San Antonio, Dec. 10, 1968.

[60] Interview with Howard Rosenberg, Oct. 16, 1967.

[61] Interview with Bernard L. Garmine, Mar. 6, 1968.

[62] Interview with Hector Morales, Mar. 6, 1968. Mr. Morales was continuing his efforts to eliminate all racial designations from traffic tickets, but at the time of this interview he had not yet succeeded.

vehicle offenses [63] and from Don Sosa, Jr., a lawyer in Las Cruces, who agreed.[64]

Several persons reported harassment of Mexican Americans by the police under the pretext of automobile safety checks. The Lohman report gives a first-hand account of an incident in San Diego in which a young Mexican American was stopped and questioned at length for having a loose tail-light connection on his automobile. The person who saw this concluded that "the cop was just looking for the boy to do something or say something so he could lay him out".[65] A resident of Albuquerque said that in 1967 his 18-year-old son was stopped by the police, searched, and checked for needle marks without any apparent reason. When the young man asked the officers why he was being stopped, they reportedly said that he had a defective plastic cover on his automobile license plate.[66]

A resident of Albuquerque reported that the police, after arresting a drunk who had injured a policeman in a Mexican American area, set up a retaliatory roadblock and proceeded to give out tickets for the slightest infraction.[67] A law student in Denver said that on Saturday nights police cars were stationed outside a Mexican American dance hall (where fights occasionally had erupted) and the police ticketed all cars leaving the area for the most minor violations.[68]

Frequency of arrests for "investigation" and "stop and frisk" practices in Mexican American neighborhoods—Many complaints were heard—some from law enforcement officials—concerning the frequency of arrest on "suspicion" or "for investigation" and of dragnet "stop and frisk" practices in Mexican American neighborhoods.[69]

According to Jess Cuellar, a probation officer in Phoenix, Arizona and a former policeman in that city, Mexican Americans living in South Phoenix, a predominantly Mexican American area, will be picked up for questioning by the police, sooner or later, even though they may have no police record.[70] Henry Trujillo of Alamosa, Colorado reported that until he complained about the practice, the State highway patrol would stop all Mexican Americans leaving Lariat, Colorado [a predominantly Mexican American town adjoining Alamosa] on the way to work and search many of their cars. Trujillo, an investigator for the district attorney's office, reported that he discovered the practice because his wife was stopped by a highway patrol officer. Trujillo said that when his wife asked the patrolman what he was doing, he replied: "Just checking cars".[71]

Such police practices particularly affect youths. In a study based on interviews with youths in Los Angeles in 1966, one author said:

> . . . whether engaged in [delinquent] activities or not, whether members of delinquent gangs or not, Mexican American boys in general perceive getting into trouble with the police as a natural state of affairs and staying out of trouble as a stroke of fortune.[72]

One of the most ambitious young men interviewed for the study, the president of his high school graduating class, said:

> Mostly everybody gets in conflict with the police once in a while, whether it is a parking ticket, whether it is being arrested for drunk driving, for narcotics, or something else. . . . I got into trouble once. It was right after the school dance. . . . I was going home and I think it was about four blocks from the dance that they pulled me over, a police car pulled us over and pulled guns on us. They opened my eyes and wanted to know whether I was on dope. I wanted to know what I did. They just said that there was a report of some activity, that some Mexican boys were taking dope, that there was a *cholo* party. So they opened my eyes and everything, rolled up my sleeve, whether I was taking dope. Then they said that I was OK and let me go. But they had no reason for stopping me.[73]

Many Mexican American juveniles complained that law enforcement officials fre-

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[63] Interview with Philip Flores, Feb. 7, 1968.
[64] Interview with Dan Sosa, Jr., Feb. 26, 1968.
[65] Lohman report at 83.
[66] Staff interview.
[67] Interview with Sam Romero, Apr. 24, 1968.
[68] Interview with Vincent Franco, Oct. 18, 1967.
[69] The Colorado Commission on Spanish Surnamed Citizens in its Report to the General Assembly on "The Status of Spanish Surnamed Citizens in Colorado", prepared in 1967, at 90–93 stated that:

> . . . it is commonly believed, and nowhere convincingly refuted, that police surveillance is much more extensive in the residential areas of the lower economic class. There may be sound reasons for this . . . but for whatever the reason, frequency of patrols in these areas is bound to apprehend a greater proportion of those groups who live in these areas . . . .

The tendency to stop and question and accuse is often greater among law enforcement officers when they are working in economically deprived areas.

[70] Interview with Jess Cuellar, Feb. 27, 1968.
One Mexican American interviewed in connection with the Lohman report said ". . . just because your face is brown and you are wearing tennis shoes, you are subject to arrest whenever a 'Mexican' commits a crime." Lohman report at 86.
[71] Interview with Henry Trujillo, Dec. 13, 1967.
[72] Celia Heller: *Mexican American Youth: Forgotten Youth at the Crossroads* (1966), at 63.
[73] *Id.* at 63–64.

quently stop, question, and frisk them regardless of whether there are grounds to suspect them of having committed an offense. Young people in San Antonio claim they are often stopped and questioned by police officers, particularly at night.[74]

Harassment of narcotics addicts in Mexican American communities—The Commission heard charges that police in Denver and Albuquerque harassed narcotics addicts in Mexican American neighborhoods. Although it is not clear that ethnic discrimination is involved, this appears to be a situation which affects Mexican Americans to a greater extent than others in these cities since Mexican Americans constitute a disproportionately high percentage of the addicts.[75]

Marshall Quiat, a Denver attorney, claimed that the police hold persons suspected of using or possessing narcotics for up to 5 days without bringing any charges in the hope of getting confessions from them. Quiat said that there is no law authorizing such arrests in Denver. He thought that the police generally treated Mexican Americans worse than they treated Anglos.[76]

A former narcotics addict stated that it is common for policemen in Albuquerque to arrest persons for "investigation" without bringing any charges against them. He has been held several times for investigation, "sometimes 2 or 3 hours, sometimes 2 or 3 days".[77] A probation officer in Albuquerque said that former addicts are picked up at random just because they are recognized by an officer and in most cases are released without charge.[78]

On April 24, 1968, a Mexican American resident of Albuquerque with a long record of narcotics arrests was driving his car en route to an interview with a Commission staff member and allegedly was stopped by a sheriff's deputy who began to search his car. According to the man, when he asked whether the officer had a search warrant, the officer pointed his pistol at his temple and said: "This is all the warrant I need."[79] At the interview the man stated that when his 4-year-old son, who was in the car, began to cry, the officer put his pistol away.[80]

At the Albuquerque meeting of the New Mexico State Advisory Committee it was alleged that police treatment of narcotics addicts was a factor in their inability to escape from a pattern of unemployment and criminality. A Federal probation officer in Albuquerque, stated:

> This is an every day occurrence to be stopped and booked . . . it is a continued cycle. . . .

If an addict on his caseload is unemployed, he said, the police will assume that he is stealing to provide for the cost of his addiction and will stop him when they see him and try to get information about his activities; if he refuses to cooperate, they charge him with vagrancy.

> . . . . This would involve the calling of a wrecker for his car, and then it would always cost him $10, $15 or $20 to redeem the car. They would book him for a matter of a day or two or three, and he would have to post a bond. Meantime, he has to borrow money from another addict or a relative, borrow enough for the bond and the car, not being employed. That night he goes out and steals and robs a couple of color TV

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[74] Interviews with Roy Valdez, Oct. 10 and 30, 1968.

[75] In Albuquerque, a Federal probation officer said that most of the addicts under his supervision were Mexican Americans. Albuquerque T. at 157. In Denver, 70 percent of persons arrested for drug offenses were either Negroes or Mexican Americans. Meeting, Police Institute, Ft. Collins, Colo., Nov. 13, 1967.

[76] Interview with Marshall Quiat, Oct. 18, 1967.

[77] Albuquerque T. at 104.

[78] Interview with William Cooper, Feb. 29, 1968.

[79] Staff interview.

[80] The fourth amendment to the Constitution protects individuals against unreasonable searches and seizures:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Supreme Court has held that an officer may arrest a person without a warrant if he has probable cause to believe that a crime has been committed, is in the process of being committed or is about to be committed. *Terry v. Ohio,* 392 U.S. 1, 9 (1968) and cases cited. If an arrest is valid, a warrantless search of the person and of the area under his immediate control do not violate the fourth amendment. *U.S. v. Rabinowitz,* 339 U.S. 56 (1950); *Chimel v. California,* 395 U.S. 75 (1969).

Recent decisions of the Supreme Court have concluded that "stop and frisk" practices by officers are subject to regulation under the amendment. *Terry v. Ohio,* 392 U.S. 1, 20 (1968); *Sibron v. New York,* 392 U.S. 40, 62 (1968). Probable cause for arrest is not required to validate an investigative stop and attendant frisk. In *Terry,* the court held that an officer, after watching several men for an extended period of time pace back and forth in front of a store window, pausing to stare at it roughly 24 times, had a reasonable ground to suspect that when they entered the store, it was to commit a robbery. He also had reason to believe that they were armed. Stopping them and patting down their outer clothing was a reasonable search, the court held, (and weapons found during the search constituted admissible evidence). In contrast, in *Sibron,* an officer who saw a man talking to known addicts, but did not overhear their conversation had no reasonable grounds to stop him and search his pockets.

sets or something to sell so he can pay off the bondsman and the car. This happens in a matter of a month, two or three times to this addict. . . . Of course, they don't feel they are getting a fair shake. . . . They can't keep up so they continually steal and they are pressured to steal even more by the way they are treated by the police.[81]

Several Federal probation officers in Albuquerque complained that the local police make it very difficult for addicts on probation or parole to find and keep jobs. Often, the probation officers stated, when an addict does find a job the police contact the employer and tell him about the addict's criminal record. Alternatively they arrest the parolee for investigation and detain him for a few days, causing the parolee to miss several days of work and his employer to fire him.[82]

One of the probation officers stated that while on parole a Mexican American addict under his supervision got a job on a ranch in the northeastern part of Mexico. Upon learning of this, an officer in the Bernalillo County Sheriff's Office on his own initiative wrote to the parolee's employer stating that the parolee was a notorious addict and thief and should not be trusted with the employer's property. The employer contacted the probation officer, who persuaded him not to fire the parolee.[83]

Inadequate police protection

In rural areas, Commission staff members were told, Mexican Americans, especially migrant workers, found it difficult to obtain police protection when they needed it.[84] In urban areas, Mexican Americans complained about the attitude of officers assigned to protect them rather than about the number of officers available in Mexican American neighborhoods.[85]

In connection with a study of sentencing done under contract to the Commission, the Western Center on Law and Poverty at the School of Law of the University of Southern California conducted interviews with Mexican Americans with respect to the administration of justice in California.[86] Those interviewed were asked whether the police tended to "ignore the safety" of Mexican Americans. Of those who had an opinion on this subject, 44 replied that the police were not concerned with providing Mexican Americans adequate protection, while five saw no difference in their treatment of Mexican Americans and others.[87] One person said: "They're only there to protect the property owned by other non-Mexican Americans." [88] Another added: "Their natural process of animal treatment toward the Mexican American is such that if he staggers on the street it is because of narcotics, but when an Anglo staggers, they call a doctor . . . ." [89]

A poverty program administrator in San Jose said:

On the West Side in San Jose, the police say: 'We are here to protect the rights of the individual.' On the East Side, however, they say: 'We're here to enforce the law.' They have a double standard; to them, it's us versus them.[90]

There is evidence that this double standard has significant impact in alienating Mexican Americans from the police. A Mexican American resident of Los Angeles said:

People do not see the police as protectors. They prefer to seek a relative's help rather than risk an officer's suspicions.[91]

A national survey of police-community relations prepared for a task force of the President's Commission on Law Enforcement and the Administration of Justice found that "Latin Americans also tend to look upon the police as enemies who protect only the white power structure." [92]

Carleton Crane, teacher of anthropology in eastern New Mexico and a former law enforcement officer, studied Mexican American atti-

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[81] Albuquerque T. at 144–45.

[82] Interview with probation officers in Albuquerque, N. Mex. Feb. 9, 1968.

[83] Albuquerque T. at 145–48.

[84] Interviews with Pete Mireles, Nov. 14, 1967, and Dennis Santistevan, Dec. 11, 1967.

[85] Interviews with Vincent Franco, (Denver) Oct. 18, 1967 and with Roy Valdez, (San Antonio), Oct. 10 and Oct. 30, 1968.

[86] Western Center Study at 137 *et seq.* Seventy-four interviews were conducted—56 in Los Angeles County, 15 in San Jose, and three in Fresno. In order to get a comparative view, 64 Mexican Americans were interviewed as well as four black persons and six Anglos. Thirty-seven of those interviewed were persons such as lawyers, court officials, or administrators who could have been expected to have concerned themselves professionally with the problems of Mexican Americans. The other persons interviewed were students or working people.

[87] *Id.* at 157–58.

[88] *Id.* at 157.

[89] *Id.* at 158.

[90] *Id.* at 160.

[91] *Id.* at 158.

[92] *Task Force Report: The Police, supra* n. 58 at 149. Some local surveys prepared for Task Force covered Southwestern cities.

tudes toward the police in Portales, New Mexico and in Los Angeles, as a part of his doctoral dissertation in anthropology. When the windshield and headlights on Crane's car were smashed while he was attending a Mexican American dance in Portales, his friends in the Mexican American community punished the offenders by ostracizing them from the community for a period of time. There was no thought of calling the local police. Mr. Crane remarked that this was typical:

> This is more the way things are handled, rather than through the legal structure of the community. They feel the legal structure is an Anglo structure, not a Spanish American structure. There is a lack of confidence in the laws.[93]

[93] Roswell T. at 140.

Summary

In the five Southwestern States which were the subject of this study, the Commission heard frequent allegations that law enforcement officers discriminated against Mexican Americans. Such discrimination includes more frequent use of excessive force against Mexican Americans than against Anglos, discriminatory treatment of juveniles, and harassment and discourteous treatment toward Mexican Americans in general. Complaints also were heard that police protection in Mexican American neighborhoods was less adequate than in other areas. The Commission's investigations showed that belief in law enforcement prejudice is widespread and is indicative of a serious problem of police-community relations between the police and Mexican Americans in the Southwest.

Chapter 2

Interference with Mexican American Organizational Efforts

The "Tierra Amarilla" raid

Law enforcement officials reportedly sought to prevent political organization of Mexican Americans in northern New Mexico in a series of incidents culminating in the so-called "Tierra Amarilla" raid in June 1967.[1]

The Alianza Federal de Mercedes, known as the "Alianza", is an organization of Mexican Americans in New Mexico under the leadership of Reies Lopez Tijerina. Its stated goal is to improve the status of Mexican Americans in the Southwest.[2]

On June 3, 1967, an Alianza meeting was to be held in the town of Coyote, in the northern New Mexico county of Rio Arriba. A number of Mexican Americans have charged that Alfonso Sanchez, then the district attorney for the First Judicial District of New Mexico (which includes Rio Arriba County), and other law enforcement officials used their powers to discourage and intimidate Alianza members who planned to attend the meeting.[3] On June 2, 1967 Sanchez, in a radio broadcast, announced that since the participants were planning to take property by force, criminal charges of unlawful assembly would be filed against all persons attending the Alianza meeting and that the penalty for this offense was 6 months in jail. Sanchez also said that extortion charges carrying a penalty of 5 years of imprisonment would be filed against all who participated in "taking over private land" (presumably a reference to the Alianza's interest in asserting Mexican American claims to land owned by Spanish settlers and their descendants in the past). He urged listeners not to attend the Coyote meeting.[4] Meanwhile, sheriffs' deputies and the police were stopping cars on the highways leading to Coyote and handing out a notice similar in substance to Sanchez' radio statement.[5]

On June 2 and 3, Sanchez allegedly ordered the arrest of 11 officers of the Alianza. Old warrants were outstanding against some of these persons; but no warrants or grounds for arrest seem to have existed against others.[6]

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[1] The action of the law enforcement officials in this matter was the subject of a suit under 42 U.S.C. 1983 and 1985 against the chief of the New Mexico State Police, the commander of the New Mexico National Guard, a district attorney of New Mexico and individual policemen, alleging violations of the privileges and immunities of citizens of the United States. *Valdez v. Black,* Civ. No. 7242 (D.C. N. Mex. filed Aug. 28, 1967). On July 12, 1969, a Federal jury found for the defendants except for one of the 13 plaintiffs who recovered $3,000 against four individual policemen who arrested him illegally after he refused his permission for a search of his house. Albuquerque Journal, July 13, 1969, at A 1 and 5. The Commission obtained information about the matter from two meetings held by the New Mexico State Advisory Committee in Albuquerque in June of 1967 and in May 1968. The Federal Bureau of Investigation also conducted an investigation, at the request of Representative Joseph Resnick and the late Senator Robert F. Kennedy. The FBI's files on this incident have been made available to the Commission. The account given here is based on these sources, as well as on affidavits sworn by the plaintiffs in *Valdez v. Black* and others involved in the incident.

[2] The Alianza has sought to regain for the Mexican American population of New Mexico land which was held by the Spanish settlers of New Mexico before the Anglo immigration into the area. For a general history of the Alianza, see "The New Mexican Land War" by Clark Knowlton in The Nation, June 17, 1968; Nabokov, "Reflections on the Alianza," The New Mexico Quarterly, Winter 1968, at 343; Nabokov, *Tijerina and the Courthouse Raid* (1969).

[3] Complaint, *Valdez v. Black, supra* n. 1; U.S. Commission on Civil Rights staff field report, Sept. 18, 1967.

[4] Knowlton, *supra* n. 2; Commission staff report, *Id.*

[5] The text of the notice was:

NOTICE TO ALL FOLLOWERS OF REIES LOPEZ TIJERINA

1. All persons participating in any unlawful assembly anywhere for the purpose of planning to take property of another by force without legal process will be charged with the crime of unlawful assembly punishable by up to six (6) months in jail and $100.00 fine.
2. All persons participating in taking by force and threats any property of another without his consent or without legal process will likewise be charged with the crime of extortion punishable by up to ten (10) years in the penitentiary and $5,000 fine.

TAKING PROPERTY OF ANOTHER BY FORCE IS THE COMMUNIST WAY, YOU ARE BEING MISLEAD. [Sic] PLEASE RETURN HOME.

GIVEN TO _____, ADDRESS _____

[6] Samuel Benevidez and Juan Sudro Valdez were allegedly arrested without warrants on the charge of unlawful assembly. Plaintiff's complaint in *Valdez v. Black.* Felix Martinez, an officer of the Alianza, told the New Mexico State Advisory Committee that he was arrested on June 2 and charged with

Some of the Alianza leaders who were arrested were taken to the courthouse in Tierra Amarilla for arraignment. News of the arrests spread and a group of armed Mexican Americans attempted what they described as a "citizens' arrest" of District Attorney Sanchez on June 5 at the courthouse to prevent further arrests. Violence resulted, the precise origins of which are unclear. Two law enforcement officers were wounded and the invaders fled, reportedly taking two other law enforcement officials with them as hostages.[7]

Meanwhile, for several days Mexican Americans in large numbers had been traveling to the Coyote meeting from all parts of New Mexico. They gathered on picnic grounds in Canjilon and proceeded to camp and prepare for the meeting. On June 5, soon after the shooting in Tierra Amarilla, armed sheriffs' deputies, State policemen, and National Guardsmen surrounded the picnic grounds in Canjilon where the Alianza meeting was to be conducted and reportedly kept men, women, and children in the picnic grounds by force for more than 24 hours without adequate shelter or drinking water. According to reports, there was no indication that more than a few of these people might have been involved in the shooting at Tierra Amarilla or even have known about it.[8]

In September 1967, Commission staff members obtained sworn affidavits from a number of persons who attended the picnic at Canjilon describing their experience with the law enforcement officials.[9] A married couple gave the following account:

> On June 5, we were on our way to a barbeque which was taking place in Canjilon. There was also to be a meeting with the barbeque. At the barbeque, approximately about 5 p.m. the State police came and asked us to come out into the open and we were told to sit on the floor which at the time was completely muddy and we did so.[10]

According to these participants, about 80 armed State policemen surrounded them until they were allowed to return to the picnic place at night, where they found that all their food, left unattended, had burned and there was no food or water to be had. Their account continued:

> . . . by this time there were approximately 450 National Guard guarding us . . . we were searched and during this time we couldn't go to the restroom and my wife was threatened by a State policeman that he would shoot her if she went to pick up a little child from the house near the camping site. We were not allowed to go to the outhouse if we were not accompanied by a guard. We were released at the end of the 24 hours.[11]

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conspiracy; that he was not arraigned, and that he spent 13 days in jail without being brought before a court or a judge. Jose Martinez, aged 72, told the Committee that he was arrested without a warrant on June 2, 1967 at 8 p.m., allegedly because he was on National Park land without authorization. He is convinced that he was arrested because he had attended a meeting of Mexican Americans in Tierra Amarilla and because he had been elected an officer of the Alianza. He spent 3 days in jail. No charges were filed against him. Albuquerque T. at 282–84, 287.

[7] A Subcommittee of the New Mexico State Advisory Committee appointed to inquire into the events at Tierra Amarilla concluded: "It seems . . . that by the callous treatment of these people on Friday, Saturday, and Sunday, June 2, 3, and 4, the horrible events of June 5th, 1967, at the courthouse at Tierra Amarilla were made possible. Apparently, their patience was sorely tried and they undoubtedly felt that their entire cause was hopeless and would be made so permanently through the series of arrests they regarded as unjustified and which were intended only to harass and persecute them". (State Advisory Subcommittee Report, July 10, 1967, at 8.) Tijerina was acquitted of kidnapping charges stemming from this incident. Other indictments against Tijerina and others involved in the raid are still outstanding. Los Angeles Times, Dec. 15, 1968, at 8, 9; Denver Post, Dec. 14, 1968, at 1.

[8] Subcommittee Report, *Id.* According to a newspaper report of the testimony presented in the case of *Valdez v. Black*, law enforcement officials had some cause to believe that at least some of the persons involved in the courthouse raid were intermingled among the picnickers at Canjilon. This fact would not give them probable cause to hold all participants in the meeting for more than brief questioning. *Gilbert v. U.S.*, 338 U.S. 922 (1966); *Terry v. Ohio*, 392 U.S. 1 (1968).

[9] Some of these same participants were interviewed by the FBI and appeared at the Special Meeting of the State Advisory Committee. They told identical stories in each case.

[10] Sworn statement of Mr. and Mrs. Joe W. Padilla, Sept. 6, 1967.

[11] *Id.*

Another man who attended the meeting at Canjilon stated:

> At approximately 5:30 p.m., about 12 State policemen arrived, or at least there were about six or seven State policemen and about five other civilian officers. They held us with rifles behind our back and made us sit down, while questioning us.[13]

They were then taken back to the picnic grounds. At one point this man said, he and his son, who was extremely frightened, were kept in a paddy wagon for 45 minutes, then released back to the picnic area.

> They kept me and my 5-year-old son there until 5 p.m. the next day and we didn't have any drinking water or for cooking, so we had to drink water from a dirty water hole cause they wouldn't let us move. On June 6th, they let us come home at about 6 p.m. When I returned home that day, my boss had seen my picture on TV or in the news. He called me a criminal and said we were criminals and he fired me from my job. My son still is very scared and he cries every time he sees a policeman.[13]

Commission staff members interviewed representatives of the New Mexico State Police and the State attorney general's office in connection with these events. These men denied that any civil rights violations had taken place. District Attorney Sanchez said that the picnickers at Canjilon were placed in protective custody to prevent violence between the State police and the Alianza.[14] This fear of violence at Canjilon seems to have been based on the view of these officials that the Alianza was planning to wage guerilla warfare in northern New Mexico. They claimed that none of the Alianza leaders, except Felix Martinez, was a native of New Mexico and that outsiders had stirred up northern New Mexico.[15] The representative of the State attorney general's office said that newspaper reports of the incidents involved were biased and that an article published in the John Birch Society magazine, which characterized the Alianza as a Communist front organization, was the best account of these events.[16] Alfonso Sanchez stated that he believed Tijerina had Communist support, that the Alianza planned an armed takeover of northern New Mexico, and that, therefore, the actions taken were reasonable.[17]

The Texas Rangers and union organization efforts in Starr County, Texas

In southern Texas, the attitudes of Mexican Americans toward law enforcement officials were more intensely hostile and fearful than in any other area. These feelings were most acute with respect to the Texas Rangers, the 62-man State police organization.

Jose Martinez, a farm worker from Pharr, Texas, who testified at the Commission's San Antonio hearing, was asked to characterize the feeling of Mexican Americans toward the Rangers. He replied: "Many people hate them, many people are afraid. . . . They will be hit or kicked. . . ." [18] A Mexican American doctor from McAllen, Texas, said that he is afraid to be alone on the highway if there is a Ranger around.[19] Older people tended to be particularly fearful because they remembered stories of earlier harassment of Mexican Americans by Rangers. The extent of the fear is indicated by the fact that the mother of a State senator—Senator Joe Bernal of San Antonio—gave a party to celebrate her son's safe return from Starr County, where Senator Bernal had had an angry encounter with Captain A. Y. Allee of the Rangers.[20] This was during a period from 1966 to 1967 when attempts by the United Farm Workers Organizing Committee (UFWOC) to organize Mexican American farm workers in Starr County led to harassment of the union organizers by the Texas Rangers.

After closed meetings held in Starr County, Texas on May 25–26, 1967, the Commission's Texas State Advisory Committee found that the Texas Rangers and local law enforcement officials in 1966 and 1967 had harassed members of the UFWOC seeking to organize Mexican American farm workers in Starr County. De-

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[13] Sworn statement of Ventura Chavez, Sept. 6, 1967.

[13] *Id.*

[14] Interview with Alfonso Sanchez, Sept. 18, 1967. State authorities defended their actions in the lawsuit arising from these events, *Valdez v. Black*, on a different basis, namely, that some of the courthouse raiders were at Canjilon. The claim of "protective custody" was not made. See *supra* notes 1, 8.

[15] Interview with Joe Black, chief of the New Mexico State Police and Eloy Blea, of the State attorney general's office, Feb. 29, 1968; Interview with Alfonso Sanchez, Sept. 18, 1967.

[16] Allan Stang, "Reies Tijerina; The Communist Plan to Grab the Southwest" in *American Opinion*, October 1967.

[17] Interview with Alfonso Sanchez, Sept. 18, 1967.

[18] San Antonio. Hearing at 431 (Spanish): 434 (English).

[19] Interview with Ramero Casso, June 1968.

[20] Interview with Senator Joe J. Bernal, Oct. 29, 1968. According to Senator Bernal, Captain Allee accused him of being partial to the strikers and this resulted in a heated argument between the two men, during which Allee stood glaring at the senator and pushing hard against his left shoulder with his right hand. *Id.*

nials of strikers' legal rights, the Committee found, included physical and verbal abuse by Texas Rangers and local officials, and the holding of union organizers for many hours before releasing them on bond. The Committee found that the Texas Rangers had encouraged farm workers to cross picket lines, and stated that the harassment and intimidation by Rangers of UFWOC members, organizers, and sympathizers "gave the appearance of [the Rangers] being in sympathy with the growers and packers rather than the impartiality usually expected of law enforcement officers".[21] The Committee observed that:

> The majority of the farm workers and members of the Farm Workers Organizing Committee are Mexican Americans. To many [Mexican Americans] the Texas Rangers are a symbol of oppression; their appearance in Starr County only served to aggravate an already tense situation. While the Committee supports fair and objective law enforcement and recognizes the possible need of Starr County law enforcement agencies to seek outside assistance in this situation, it questions whether the Texas Rangers are the appropriate source for such assistance.[22]

The Committee recommended further investigation of its charges by the Commission. On December 12, 1968, the Commission heard testimony of several witnesses confirming the findings of the Committee. According to the testimony the Rangers conferred with and acted on behalf of the growers and joined with local law enforcement officers in attempting to break the strike and denying the strikers and strike sympathizers their legal rights.[23]

More than a hundred arrests were made of farm workers and union sympathizers on such charges as trespass, unlawful assembly, secondary boycott, illegal picketing, abusive language, impersonating an officer, and interfering with the arrest of another.[24] It was reported that these arrests usually occurred after some significant success was achieved by the union.[25] One witness testified that Ranger Captain A. Y. Allee told the workers he would get them jobs if they would discontinue their participation in the strike and that the strike would only have a depressing effect on the Valley.[26]

The director of the Texas Department of Public Safety, Wilson E. Speir, and Captain Allee denied the allegation that they consulted with the growers during the strike[27] and took the position that they enforced the laws impartially.[28]

The El Paso, Texas tenant movement

In the spring of 1968, a group of 40 to 50 slum tenants in El Paso, Texas, organized by the MACHOS (Mexican American Committee for Honor, Opportunity and Service), marched to the home of their landlord to present him with a list of grievances and asked him to meet with a committee to discuss them. According to participants, the landlord's wife told the tenants that her husband was not home, and then called the police. The group reportedly crossed to the other side of the street into a public park and knelt to pray. Participants stated that six police cars arrived on the scene and the patrolmen began to harass the marchers and threaten them with arrest. The patrolmen are reported to have told the Mexican American demonstrators that all they wanted to do was have 15 or 20 kids apiece, and advised them to take birth control pills to keep down the size of their families and thus obtain better living accommodations. The demonstrators said they also were told by the patrolmen to get out of that part of town and stay where they belonged.[29] While the patrolmen were speaking in this manner, according to the participants, a police lieutenant and a sergeant stood by and made no effort to intervene.

According to El Paso's assistant chief of

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[21] Texas State Advisory Committee to the U.S. Commission on Civil Rights, *The Administration of Justice in Starr County, Texas*, 2, 3 (1967).

[22] *Id.* at 3.

[23] San Antonio Hearing at 425, 453.

[24] *Id.* at 423–24, 427.

[25] *Id.* at 425.

[26] *Id.*

[27] *Id.* at 742.

[28] *Id.* at 722–23, 743–44.

[29] Interview with Jose Aguilar and Thomas Sinclair, June 28, 1968. The attitude of these patrolmen, that Mexican Americans should stay in their own section of town, apparently is held by some other policemen in the Southwest, according to several complaints. The director of the University of Colorado's Assigned Counsel Program said that the police in Denver will stop Mexican Americans in suburbs because they are inherently suspicious of their presence in those areas. Interview with Don McDonald, Nov. 14, 1967. Mexican Americans in Monte Vista, Colorado stated that one officer stopped all Mexican American youths driving through Anglo neighborhoods and told them "I don't want to see you around here again." Group interview, Dec. 14, 1967. Members of a Mexican American youth gang in Albuquerque complained that the "cops jump all over them" when they go to non-Mexican American parts of town. Interview with Joseph Fernandez, Apr. 25, 1968.

police the MACHOS always had notified the police in advance of any march or demonstration and nothing like this incident had occurred previously. This particular confrontation developed, according to him, because the MACHOS failed to inform the police in advance of the proposed demonstration. The assistant chief also stated that the lieutenant involved had been reprimanded for failure to take charge of the situation and immediately stop the harassment of the demonstrators.[30]

[30] Interview with Harris T. Vogel, June 28, 1968.

Chapter 3

Inadequacy of Local Remedies

Internal complaint procedures

The Commission questionnaire mailed to law enforcement agencies in the Southwest as part of this study included a question on the number of complaints filed with law enforcement agencies by members of the public. Only 194 agencies reported any complaints against their employees for 1967. In response to the further question on how many of the complaints were made by Mexican Americans, only 70 agencies responded, reporting a total of 290 complaints made by Mexican Americans in 1967—6.9 percent of all reported complaints. In view of the fact that many agencies reporting complaints did not break them down by ethnic origin of the complainants, the figure of 6.9 percent is a conservative estimate.[1] The greatest number of these related to the use of excessive force, closely followed by complaints about inadequate police protection.

In most southwestern cities the only body to which complaints of malpractice by law enforcement officers can be addressed is the local law enforcement agency itself.[2] It is relatively easy to file complaints with these agencies. Only 25.8 percent of the respondent agencies required complaints to be in writing; less than 5 percent required notarized or sworn complaints. Most [61.8 percent] claim to investigate all complaints received. In a majority of the agencies, final resolution of complaints rests with the head of the agency.[3]

The fact that complaints must be lodged with the organization of which the accused officer is a member discourages persons with grievances from filing their complaints. According to Art Garcia, director of the American Civil Liberties Union Police Malpractice Center, located in a predominantly Mexican American area in Los Angeles:

> In the beginning [when the Center was established] we tried filing at the local station; then we found it very unsatisfactory because at the local station [they were] usually very hostile or defensive with the clients.[4]

Garcia cited an incident in which he escorted a complainant who could not speak English very well to the local precinct for the purpose of making a complaint:

> [O]ne time I took this fellow who could speak a little English but he was more comfortable with Spanish. We went into the station to file the complaint, and they practically called the guy a liar when he answered, when he had difficulties answering the questions. The sergeant there told him that they had no obligation to speak Spanish or to make an attempt to take his complaint if he couldn't speak English.[5]

After 2 years of operating police malpractice centers in Los Angeles, the American Civil Liberties Union of Southern California issued a report extremely critical of the way the Los Angeles Police Department handled complaints of police misconduct.[6] The centers were opened in low-income areas in Los Angeles to simplify the filing of complaints with the police. From July 1966 through September 1968, the three centers—one in Watts, one in predominantly Mexican American East Los Angeles, and one in the heterogeneous Venice area—received a total of 734 complaints.[7]

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[1] For a fuller description of the questionnaire, see the Preface and Chapter 9, *infra*.

There is evidence that Mexican Americans tend to complain less frequently than other groups. Samuel Martinez, coordinator of the Colorado Office of Economic Opportunity, said that Mexican Americans refrain from complaining about discrimination because of pride, fear and a belief that complaints are futile. Interview, Oct. 18, 1967. A poverty program administrator in Los Angeles remarked that the Mexican American tends to respect authority and "accept what is given out to him." Interviews conducted by the Western Center of Law and Poverty in connection with a study of "Sentencing of Mexican Americans," 1968, at 154. A Mexican American youth from Los Angeles, who described an alleged incident of police harassment to the California State Advisory Committee, was asked whether he had filed a complaint. He replied:

> You never complain. That is something you just don't do—like today, when I came right here, when I gave my name if somehow it gets back to the sheriff's station, they will pick me up and they will say, 'Oh, I've heard about you,' then I'm going to get it. Los Angeles T. at 148.

[2] In some towns, complaints may be addressed to the city council or city manager.

[3] Law Enforcement Questionnaire, Section III—Complaints.

[4] Los Angeles T. at 70.

[5] *Id.*

[6] *Law Enforcement: The Matter of Redress* 1969, see *supra* chap. 1, n. 37 (Hereinafter ACLU Report).

[7] ACLU Report at 53–54.

Screening by center personnel left 540 complaints involving 639 complainants in which there was substantial belief that police malpractice had occurred. One hundred seventy-four of the complainants in these cases were Mexican Americans.[8]

A majority of the complaints [70 percent] was directed against the Los Angeles Police Department,[9] which shares jurisdiction with the Los Angeles County Sheriff's Department over the areas serviced by the centers. The centers filed 165 formal complaints with law enforcement agencies. Most [128] of the centers' complaints were filed with the Los Angeles Board of Police Commissioners, which is part of the police department, and whose procedures bore the brunt of the ACLU's criticism.

The Los Angeles Police Department's Internal Affairs Division investigates complaints filed against the department. If the complaint is found sufficiently substantial, the officer involved may request a trial before the department's board of rights rather than submit to summary punishment.[10]

The complainant is not always allowed to testify. Garcia described the handling of one complaint which involved a Mexican American resident of East Los Angeles who was arrested on an old traffic violation. This man was angry because he believed that the charge had previously been satisfied. While he was in jail and handcuffed, he exchanged words with one of the officers. According to Garcia, the complainant was then beaten so severely that he later had to have two operations on his testicles. He was stripped naked, placed in a cell overnight without medical attention and not until the next day, when the shift changed, did the guards give him medical attention.[11] At a disciplinary hearing before the board of rights, the officer responsible for the beating was charged with assault; a separate charge of failure to provide proper medical attention was also made against him. The officer was found guilty of failure to provide proper medical attention, but was acquitted on the assault charge. The complainant, Garcia said, was not allowed to testify at the hearing, although he was present and willing to testify.[12]

Fifty-one complainants were not arrested in their confrontation with the police and 37 were arrested who were subsequently cleared of all criminal charges lodged against them.[13] The centers were notified of the disposition of 45 of these 88 complaints by the police department. In only five instances did the department involved find that its officer had overstepped his legal authority. In 40 cases, the department upheld the actions of the officer although no criminal charge was filed against the complainant or the complainant was acquitted.[14]

In Albuquerque, a Federal probation officer reported that he complained to the officer in charge of the detective division about the way some detectives treat Mexican American narcotics addicts who are under his supervision. According to the probation officer, the detective captain "simply offers disbelief. He could not believe it. He thinks I've been lied to by the addict. That is as far as we have gotten with it".[15]

Alfonso Caudillo, a consultant to the Citizens' Interracial Committee of San Diego, California, told the California State Advisory Committee that the committee—an official city

[8] *Id.* at 55. Many of the complaints involved more than one complainant. Of the 639 complainants, 314 were Negroes and 118 were Anglos. The other complainants were Latin American, Oriental or of unknown race or origin.

[9] *Id.* at 56.

[10] Although these trials are ostensibly open to the public, in practice they are closed at the request of the defendant officer. *Id.* at 17.

[11] Los Angeles T. at 73.

[12] *Id.* at 74.

[13] ACLU Report at 71. Seventy-five of the complaints of exonerated persons were filed with the Los Angeles Board of Police Commissioners, nine with the county sheriff, and four with other local departments. *Id.* at 69.

[14] The disposition of the other 43 cases is not known.

[15] Albuquerque T. at 159.

agency—had filed about 60 complaints per year against the local police department for the previous 3 years. During this period, Caudillo could only recall the complainants prevailing five times.[16] In one case, according to Caudillo, the investigators threatened the witnesses with prosecution:

> Again, the witnesses were told by the investigators that they were concerned because they had caused all this trouble, and they ended up making a statement that don't you know you can get into trouble from making false statements like this?[17]

Caudillo believes that because of this police attitude people in the community are unwilling to file further complaints.

Chief L. M. Hall of the Roswell, New Mexico Police Department told the New Mexico State Advisory Committee that he did discipline an officer if he believed a valid complaint had been lodged against him.[18] In an interview with a Commission staff member, however, he also indicated that he felt some obligation to protect his officers and his department against civil suits. In one case, Chief Hall stated, an officer had used "a little too much force" in arresting a young Mexican American whom the officer believed to be drunk. According to his lawyer[19] the young man was not drunk, but was suffering from cerebral palsy and was slightly retarded (an affliction attested to by other residents). The young man was released from custody as soon as the police department was told of this situation. Chief Hall stated, however, that the charges against the young man had not been dropped. He said: "If they bring a civil suit, then we will file criminal charges".[20]

In a small community, internal police review of complaints may be of particularly limited effectiveness. In small towns members of the department are more likely to know each other socially as well as in their work and their judgments are more likely to be influenced by personal relationships. The chief of police of Alamosa, Colorado defended the actions of one of his officers, against whom several complaints had been filed by Mexican Americans, on the ground, among others, that the officer had problems.[21]

Regardless of the size of the community, the disciplinary powers of law enforcement agencies may be limited by the employment protection rights of their officers. For example, an employee of the Denver Sheriff's Department reported that an employee of the department may appeal any suspension to the personnel director of the Office of Career Service of Denver. If the director's decision does not satisfy him, he may appeal to the career service board and he is entitled to an informal quasi-adversary hearing before the board.[22] If the board upholds the decision, judicial review may be sought. And an employee is likely to appeal any adverse action because if he is dismissed, he is barred from any other career civil service job in Denver.[23] According to members of the Denver Commission on Community Relations, similar regulations for the protection of Denver police officers have inhibited disciplinary action by the chief of police.[24]

External complaint procedures

In response to public pressure, some cities in the Southwest have established independent or quasi-independent police review boards. In Denver, the mayor, after rejecting a proposal for a civilian review board, established a Mayor's Committee on City-Community Relations to investigate citizen complaints including complaints of police brutality. The committee is "advisory" only: it has no subpena power, and it has no power to enforce its decisions. The chairman of the committee in the fall of 1967 stated that nine out of 10 complaints involved the police. Approximately 40 percent of the complainants are Mexican Americans. The standard procedure of the committee, according to the chairman, is a "whitewash."[25] In the fall of 1967, the director of the Colorado Commis-

[16] Los Angeles T. at 165.
[17] *Id.* at 167.
[18] Roswell T. at 163.
[19] Interview with John P. Cusack, Feb. 11, 1968.
[20] Interview with Chief L. M. Hall, Feb. 27, 1968.
[21] Interview with Chief Nyle E. Langston, Dec. 14, 1967. In one case, the complaint resulted in an FBI investigation. In another case, the same officer allegedly beat a Mexican American he arrested for disturbing the peace in November 1967. Although the person arrested was convicted of disturbing the peace and resisting arrest, the Alamosa County Court judge remarked during the trial attended by a Commission staff attorney that the officer's use of force during the arrest was "more severe than necessary."
[22] Interview with Mose Trujillo, Nov. 13, 1967.
[23] *Id.*
[24] Interview with Minori Yasui, Oct. 16, 1967.
[25] Interview with Charles Dosh, Dec. 12, 1967.

sion on Civil Rights described this agency as a "toothless tiger" and said that it had achieved very few tangible results.[26]

In 1968 the city manager of Albuquerque reported the existence of a standing committee to investigate allegations of police malpractice. The committee consists of representatives of the city attorney's office, the police department, and the city's department of personnel. It includes no representative of the community. Paul Phillips, chairman of the New Mexico American Civil Liberties Union, did not think that the committee, which is advisory only, provided an effective remedy to complainants.[27] The city manager, who decides whether or not to follow its recommendations, said in an interview with a Commission staff member that the committee was set up to investigate a much-publicized complaint by a white woman against the police. The city manager said that he knew that the woman was "lying," and, therefore, he appointed a committee to handle this matter.[28] The committee found that the police had not abused her but recommended several changes in police procedures—a decision which implied a political compromise.[29] At the time of the interview, there were no cases pending before the committee.[30] Neither the Denver nor the Albuquerque committee made any effort to publicize its availability to citizens' complaints.[31]

Obstacles to litigation

Another impediment to redress of grievances against police malpractices is the reported reluctance of many lawyers engaged in criminal practice to bring suits against the police. Manuel Aranda, a lawyer practicing criminal law in East Los Angeles, stated that several Mexican Americans had asked him to file suits against the police because of alleged brutality. Aranda refers such complaints to attorneys specializing in civil litigation but generally does not encourage complainants to sue because of the expense and the slim chance of success.[32]

Aranda stated that he frequently receives complaints of police misconduct from clients who are defendants in criminal actions.[33] He does not raise this issue in their defense. In many cases he believes that his clients provoked the assault. He also feels that to raise the issue would jeopardize his good relationships with the district attorney's office and the police. Aranda explained that the success of a criminal defense depends in large part on negotiations with respect to the charge and the sentence and if he were to bring accusations against the police, he would find prosecutors "less receptive" to his proposals for disposition of other cases.[34] Armando Morales, chairman of the police community relations board of the Council of Mexican American Affairs in Los Angeles, stated that most Mexican American attorneys in Los Angeles are unwilling to jeopardize their good relationship with the district attorney's office by representing plaintiffs in police malpractice cases.[35]

Alfred Figueroa, a resident of Blythe, California, describes his difficulties in finding a lawyer to file a suit against the police department. The lawyer who had successfully defended Figueroa against the charge brought after the arrest in which Figueroa was beaten initially agreed to file a suit against the police department but later refused to take the case. He reportedly told Figueroa:

> I'm sorry, Alfred, I can't do nothing about it because I've got to live here in this town and I am going to make bad relations if I do this.[36]

Figueroa then retained an attorney from a neighboring town who delayed filing and as Figueroa put it, "just led me on and led me on". Finally, the attorney told him that the odds were against him, that no case of this kind had ever been won in Riverside County and advised him to drop the case.[37]

Most civil actions against policemen are brought under 18 U.S.C. 1983, a Federal statute which makes liable any person acting under

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[26] Interview with James Reynolds, Oct. 18, 1967. The Colorado Commission on Civil Rights has no powers which would enable it to redress grievances against policemen; and, therefore, it must refer complaints to the mayor's committee. The commission has succeeded in obtaining the transfer of some officers to different duty posts as a result of complaints against them. *Id.*

[27] Albuquerque T. at 41–42.

[28] Interview with G. B. Robertson, Feb. 28, 1968.

[29] *Id.*; Albuquerque T. at 42.

[30] Interview with G. B. Robertson, Feb. 28, 1968.

[31] *Id.*; Interview with Charles Dosh, Dec. 12, 1967.

[32] Los Angeles T. at 112.

[33] *Id.*

[34] *Id.* at 114.

[35] *Id.* at 91.

[36] *Id.* at 271.

[37] *Id.* at 272. Figueroa finally obtained a lawyer from San Bernardino who filed his lawsuit. *Id.*

color of law who deprives any other citizen of his rights, privileges, and immunities under the Constitution, but few cases are brought based on police misconduct.[38]

Only two of these cases were brought by Mexican Americans and (before Mr. Figueroa's suit) only one had been won by a Mexican American in California.[39]

Local prosecution of officers

There were few reports of successful local prosecutions of law enforcement officers for illegal actions against citizens in the five States studied. In several cases involving allegations of serious misconduct, no indictment was sought by local authorities.[40] In a few cases in which the alleged use of excessive force resulted in the death of the victim, local authorities sought to prosecute the officer for homicide. In Stanton, California and Denver, Colorado, two such cases were dismissed by the judge after presentation of the prosecution's case.[41]

According to Dr. Robert Hausman, former medical examiner of Bexar County, Texas, which includes San Antonio, 19 persons were killed by the San Antonio police from 1956 to 1968; three officers were indicted by the grand jury as a result of these deaths, and in only one case was the officer involved convicted of an offense. Although at least 10 of these cases were presented to a grand jury, no indictment was handed down in most of them. Dr. Hausman thought that the district attorney was not anxious to obtain indictments and believed that this was the main reason so few were returned.

The doctor added that in most such cases, the stories of the citizen and of the policeman differ widely and juries tend to believe the police. In one instance which involved a charge of assault on an officer, the officer claimed to have shot a suspect in self-defense from the front, while the suspect claimed to have been shot from the back. Dr. Hausman examined the wound and found that the bullet had entered from the back. He testified to that effect, but the jury convicted the defendant of aggravated assault on the policeman.[42]

The Commission heard of only one instance in which an attempt had been made to prosecute an officer for an assault that did not result in the death of the victim. The incident at Pecos Memorial Hospital described earlier,[43] in which Officer South was accused of assaulting Mr. and Mrs. Contreras and Mrs. Alvarez, led Alva Archer, at that time district attorney for the 143d Judicial District of Texas (which includes Pecos), to seek a grand jury indictment against Officer South for assault.

Archer testified at the Commission hearing that the testimony of Mrs. Alvarez, Mrs. Contreras, and Mrs. Kerr given at the same hearing was substantially identical to their testimony before the grand jury.[44] The grand jury did not bring an indictment against Officer South. At the Commission hearing Archer refused to speculate on what led the grand jury to return a no bill. However, he did state that if he had had the authority, he would have proceeded against Officer South by filing a sworn complaint and information, which would have initiated a prosecution without the need for grand jury indictment.[45]

The grand jury did make a statement, which became a matter of public record, that the jurors believed Officer South had not acted in a manner befitting a member of the department of public safety.[46] Archer implied that the jury

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[38] In Ginger and Bell: "Police Misconduct Litigation—Plaintiff's Remedies," Vol. 15 of American Jurisprudence Trials, 1968, pp. 580–90. Recently the total number of cases filed under that statute has increased dramatically, but it is not known how much of the increase involves suits against policemen. *Note, Grievance Response Mechanisms for Police Misconduct,* 55 Va. L. Rev. 920, n. 54.

[39] *Lucero v. Donovan,* 300 F. 2d 441 (9th Cir. 1962), 354 F. 2d 16 (1965), involving the illegal arrest and search of a Mexican American woman in Los Angeles who was insulted, forced to submit to a humiliating bodily search, detained overnight and then released without charge. On Aug. 22, 1966, plaintiff recovered $5,000 in damages against the officers involved (reported in Civil Liberties Docket, Vol. XIII, 1967–1968, at 74–75, published by Ann F. Ginger, Berkeley, Calif.).

[40] These include the Fuentes case, the Figueroa case, and the Barba case, described in chap. 1.

[41] Los Angeles T. at 302–09; interview with Mose Trujillo, Nov. 13, 1967.

[42] Interview with Robert Hausman, M.D., Oct. 3, 1968. Dr. Hausman was deeply concerned by what he considered to be the increasing violence of police officers against citizens and the unwillingness of the San Antonio City Council even to investigate this problem. He was forced out of his position, he alleged, because of his attempts to obtain an investigation. Dr. Hausman is now chief deputy medical examiner for New York City.

[43] See *supra* pp. 3–4.

[44] San Antonio Hearing at 696. Mrs. Starley and Mr. Heath (see *supra* p. 3 n. 13) also testified before the grand jury. Mrs. Starley, in an interview with Commission staff members, corroborated Mrs. Kerr's version of the incident. It is not known what Mr. Heath's testimony was. Mr. Archer was also concerned about two other instances of alleged misconduct by Officer South concerning which testimony was also presented to the grand jury.

[45] *Id.* at 698.

[46] *Id.* at 699.

may have believed some of the charges brought against Officer South but may have regarded criminal punishment as too severe. Archer testified:

> I think some of [the jurors] may have thought that maybe he would be transferred, or something like that.[47]

Archer's testimony also illustrated other obstacles which may interfere with a prosecution based on police malpractice. According to Archer, Officer South's superiors tried to dissuade Archer from bringing an indictment.[48] The community climate apparently was also quite hostile. Mrs. Kerr testified that during the week before her appearance before the grand jury, she received an anonymous phone call. She stated:

> [The caller] asked me, was this Mrs. Kerr, and I told him yes. And he told me that if I was smart I wouldn't testify in front of the grand jury and before I had a chance to say anything else he hung up.[49]

Archer considered it extremely difficult to have any success in cases like this.[50]

Retaliation by police officers against complainants

Matt Garcia, the Texas lawyer who testified at the Commission's San Antonio hearing concerning police treatment against Mexican Americans by law enforcement officials in small towns in south Texas, was asked whether Mexican Americans had any remedy. He replied:

> Well, first of all, it is getting them to get up enough nerve to come in and complain. I have had dozens of people come from these small towns and tell me about their story, give me the facts of the case, and I have told them, well now, you understand that beyond doubt there is going to be reprisals. You have to be a man of a lot of intestinal fortitude to take a witness stand in the man's town and tell what he had done to you. If you are willing to do this, well, I have the willingness and the ability to go in and help you, because I'm not afraid.
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> And many time they never come back . . . . And, really, you can't blame them. There are a lot of reprisals in these little towns.[51]

Natividad Fuentes, a Mexican American from Uvalde, Texas who alleged that he had been beaten by State highway patrol officers on January 7, 1968 when arrested for an alleged driving offense, complained to the Federal Bureau of Investigation (FBI).[52] Soon afterwards, according to Fuentes, the deputy sheriff against whom the complaint had been lodged filed further charges against him, and he was forced to post additional bond to avoid going to jail. Fuentes was convinced that the additional charges were filed in retaliation for lodging a complaint with the FBI. Another member of the Mexican American community in the same town, shortly after calling a meeting to discuss this case, reportedly was charged by a deputy sheriff with passing a bad check for $5. The charge was based on an incident occurring a year before the meeting took place. Although the charge was dismissed, it was interpreted by the Mexican American community as another attempt at retaliation or intimidation.[53]

A Mexican American narcotics addict in Albuquerque, New Mexico, complained to the police department in October 1967, that he was constantly being harassed by a particular police officer. He told the New Mexico State Advisory Committee that approximately 1 month thereafter the officer against whom he had made the complaint arrested him in a bar and took him to the city jail. According to the addict, the officer escorted him to the station house elevator and hit him. He stated:

> . . . I had a cigarette in my hand and I was taking a puff off the cigarette when all of a sudden my glasses flew off. He slapped me on the side of the jaw and I asked him what was wrong with him. 'Why are you hitting me?' And he said: 'Oh, you want to talk to the lieutenants about me?' and I said: 'Sure, I want them to tell you to leave me alone.'[54]

He claims that he was insulted and severely beaten by the officer. He was charged with

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[47] *Id.* at 698. Officer South was subsequently transferred to Brownsville, Tex.

[48] *Id.* at 696–97. Interview with Mr. Archer, Monahans, Tex. Sept. 12, 1968.

[49] *Id.* at 692.

[50] *Id.* at 702–03.

[51] *Id.* at 671.

[52] Interview with Natividad Fuentes, Apr. 12, 1968.

[53] Mike Gonsalez, the lawyer who represented Fuentes, reported that he himself was threatened because of his efforts to obtain Federal intervention in the Fuentes case. He testified at the Commission's San Antonio hearing that after the Department of Justice filed a criminal information in Federal court, he received telephone calls threatening his life and that of his family and an attempt was made to burn his house down. "So these people are really ruthless," he said. "They stop at nothing to try to intimidate or to eliminate you." San Antonio Hearing at 672.

[54] Albuquerque T. at 71.

drunkenness and resisting arrest, but he says that his sentence was suspended when his lawyer gave the judge a medical report on the injuries inflicted in connection with the arrest.

Rev. John B. Luce, an Episcopal priest familiar with the Mexican American community in Los Angeles, alleged that the sheriff's department broke up a college recruiting session at a neighborhood "Coffee House" in 1967 in retaliation for complaints against the department. In order to attract the interest of young people, Mexican and black Americans had organized a series of "educational happenings" including rock and roll bands and Mexican American speakers. Father Luce described how the sheriff's department broke up one of the meetings:

> This happening was going on, and the assistant directors of the colleges, the deans were there, and were signing up the kids in their preliminary applications . . . there was wonderful dialogue going on, there was motivation and you could see the kids signing up. The meeting was ending; the Los Angeles Sheriff's Department arrived; put many, many of the participants against the wall, searched them and cited three of the youngsters for selling coffee without licenses.[55]

Father Luce believes that the arrests were made in retaliation for the assistance given by regular patrons of the coffee house to a group of Mexican Americans who had organized to protest an incident of police brutality.

Summary

In the Southwest, administrative and judicial remedies for illegal police acts such as the ones described earlier in this report, are inadequate to provide prompt and fair redress. Police complaint procedures are not procedurally fair and seldom result in disciplining officers. External administrative review is practically nonexistent and civil and criminal litigation of police brutality cases is rare. Finally, instances of police retaliation against complainants indicate that to pursue any remedy against police abuse may be dangerous to Mexican Americans.

[55] Los Angeles T. at 48–49.

Chapter 4

Federal Remedies

Background

The principal Federal criminal sanction against violence or other unlawful action by State and local officials is Title 18, Section 242 of the U.S. Code. It provides:

> Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both and if death results shall be subject to imprisonment for any term of years or for life.[1]

Section 242 is not limited in its scope to violence motivated by the race or ethnic background of the victim.[2] It is, however, a weapon against discriminatory law enforcement since minority persons may be less likely than others to obtain local redress.

This section is enforced by the Civil Rights Division of the Department of Justice headed by the Assistant Attorney General in charge. In August of 1969 there were 92 attorneys assigned to the Division.[3] Until September 1969, the Division was divided into sections covering geographic areas. The western Section included jurisdiction over the five Southwestern States covered in this report.[4] On September 24, 1969, the Division was reorganized from a geographical to a functional form. Complaints of police violence previously handled by the western or other geographical sections are now assigned to the Criminal Section.[5]

Investigations of violations of Section 241 and 242 may be initiated by individual complaints to local FBI offices, to the local U.S. attorney, or to the Department of Justice headquarters in Washington, D.C.

The Department and U.S. attorneys may also request an investigation of an incident on their own initiative.[6] The Federal Bureau of Investigation, as the investigative arm of the Department of Justice, is required by instructions from the Civil Rights Division to conduct preliminary investigations of all apparent violations of §§ 241 and 242.[7] A preliminary investigation usually consists of interviews with the victim, with the law enforcement officer who is the subject of the complaint, with some, but not necessarily all, of the witnesses, a check of medical records or reports, arrest records or reports, and photographs of the victim if the injury is recent and visible.[8] The preliminary investigation and report is designed to enable the Civil Rights Division to determine whether there has been a violation of Federal law. If it appears that such a violation has occurred, the Division requests the Bureau to conduct a full investigation.[9]

The Assistant Attorney General in charge of the Civil Rights Division approves all recommendations for prosecution which are made by staff attorneys.[10]

The standard for initiating a prosecution is based on whether the Department believes it can prove a violation. The probability of success is not a criterion.[11]

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[1] 18 U.S.C. 242 as amended by Title I of the Civil Rights Act of 1968. Other related criminal statutes are 18 U.S.C. 241 which prohibits conspiracies to prevent citizens from exercising their rights or privileges under the Constitution or laws of the United States; and Title I of the Civil Rights Act of 1968, 18 U.S.C. 245, which sets forth criminal sanctions for the use of force or threat of force to interfere with the exercise of specific federally protected rights. Unlike Section 242, however, these statutes are not specifically directed to misfeasance by State officials.

[2] *U.S.* v. *Classic,* 313 U.S. 299 (1941).

[3] Telephone conversation with Gerald P. Choppin, Chief, Administrative Section, Civil Rights Division, Aug. 18, 1969.

[4] As of August 1969, 12 attorneys were in this section, none of whom was Mexican American. *Id.* See also interview with David Norman, Deputy Assistant Attorney General, Civil Rights Division, Department of Justice, July 14, 1969 (hereinafter referred to as Norman interview).

[5] Memorandum No. 69–4 of Sept. 24, 1969, to all personnel, Civil Rights Division, Department of Justice. Under the new plan, the Criminal Section was expected to be manned by 15 attorneys and two research analysts, as well as a chief and deputy chief.

[6] *Id.*

[7] If there is not an apparent violation—for example, where a private individual rather than a law enforcement officer is the subject of the complaint—the FBI refers the complaint to the Department of Justice for instruction. Norman interview.

[8] Norman interview.

[9] *Id.*

[10] *Id.* Decisions not to prosecute are made by the Division's attorneys. They are not reviewed at a higher level, except in cases where the victim of the alleged violation died. In that case, the head of the Division reviews the decision.

[11] *Id.*

Need for more intensive Federal investigations

This study of enforcement of Section 242 indicates that it would be strengthened by more intensive investigations of alleged violations.

The Commission staff heard several complaints concerning investigation of allegations of police misconduct toward Mexican Americans. One of the most serious criticisms by Mexican Americans arose in 1968 in the case of Natividad Fuentes, a resident of Uvalde, Texas.

According to Fuentes,[12] on January 7, 1968, he was driving home with his wife from a nearby town when his car spun out of control on an icy highway. The car came to a stop on the shoulder on the wrong side of the highway. Shortly thereafter, two highway patrolmen accompanied by a deputy sheriff from Uvalde, stopped to see what had happened. Mr. and Mrs. Fuentes were still sitting in their car, shaken by the accident. Fuentes explained that the highway patrolmen yanked open the door on his side of the car, jerked him out, accused him of being drunk and, without apparent provocation, one of them began hitting him over the head with a blackjack. He was taken to jail without any charges having been filed and the next morning was charged with drunken driving and released on his own recognizance by the county judge. He immediately went to his doctor who ordered him to stay in bed because of the gravity of his injuries. After he reached his home, the two patrolmen who allegedly had attacked him and the deputy sheriff reportedly attempted to rearrest him and desisted only when Fuentes convinced them that he had been released on his own recognizance.

He and other members of the Mexican American community believe that the members of the Texas Highway Patrol and the deputy sheriff are prejudiced against Mexican Americans and that their actions in this and other cases were motivated by bias.[13] His attorney filed a complaint with the Federal Bureau of Investigation in January of 1968.

On March 23, 1968, an FBI agent called Fuentes to discuss the case with him over the telephone. When Fuentes requested a personal rather than a telephone interview,[14] the agent who visited him reportedly spent only 5 minutes talking to him. During this time the agent, according to Fuentes, did not ask a single question pertaining directly to the alleged beating but merely asked whether he had had any previous arrests [15] and whether he was actively supporting two local Mexican American political candidates.

When the Commission investigated this case in April of 1968, no action had been taken by the Department of Justice on the report of the FBI's preliminary investigation.[16]

Concerned about the apparent inadequacies of this investigation, on May 20, 1968, the General Counsel of the Commission wrote to the Civil Rights Division of the Department of Justice, forwarding a copy of the Commission's investigative report and suggesting further investigation of the case by the Department.[17] A Civil Rights Division attorney reinvestigated the case and on June 28, 1968, the Department of Justice filed an information charging Patrolman William R. Gerth of the Texas Highway Patrol with assaulting Natividad Fuentes in violation of Section 242 of Title 18 of the U.S. Code,

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[12] Interview with Natividad Fuentes, Apr. 12, 1968. See also interview with Gilbert Pompa, Apr. 9, 1968, a representative of the Department of Justice Community Relations Service, who was familiar with this case.

[13] *Id.* Other Mexican Americans interviewed in Uvalde alleged that the deputy sheriff broke up a Mexican American dance and beat up a 22-year-old Mexican American in order to get information about his brother. Interview with Jose Uriegas and Gabriel Tafolba, Apr. 12, 1968.

[14] Fuentes believes that the agent called him from the office of the local sheriff against whose deputy the complaint had been filed.

[15] Such questions would be relevant only if his actual complaint were heard and hence his credibility placed in issue.

[16] At first the FBI agent who had been assigned to investigate the complaint claimed that efforts to locate Fuentes were unsuccessful. Letter of Feb. 19, 1968, from J. Myers Cole, Special Agent to Fuentes, (Copy in Commission files). Fuentes said that because of his injuries he was at home every day and that he did not believe that the agent had tried to contact him. Interview with Natividad Fuentes, Apr. 12, 1968.

[17] Letter from Howard A. Glickstein, General Counsel of the Commission, to Stephen J. Pollak, Assistant Attorney General, Civil Rights Division, May 20, 1968.

which prohibits the infliction of summary punishment under color of law.[18]

Mrs. Contreras and Mrs. Alvarez, alleged victims of the Pecos incident mentioned earlier,[19] testified at the Commission's San Antonio hearing that as of December 1968, 6 months after the incident which they described, they had not been contacted by Federal agents. However, the FBI was conducting an investigation of the incident and had interviewed Joan Kerr, a witness to the incident who testified at the San Antonio hearing.

The victim of an incident of alleged police malpractice in Albuquerque, New Mexico reported that she was never interviewed by the agents who investigated the case. The arrest and alleged beating in April 1967 of Mrs. Valencia Douglas, a Mexican American woman in Albuquerque, of her children, and of a neighbor, Cathy Wagner,[20] was a subject of investigation but the Department of Justice,[21] in response to a Commission inquiry, indicated that the Bureau agents did not interview either Miss Wagner's mother, an eye-witness, or Mrs. Douglas, who had moved to El Paso, Texas.[22] The Department closed the file on the basis of a finding that the complainants assaulted the police officers.[23]

On December 11, 1968, three members of the Commission heard two Mexican Americans from Los Angeles, Mrs. Socorro Barba and Jesus Dominguez, describe two alleged incidents in which they were involved.[24] A transcript of their testimony was forwarded to the Department of Justice in January 1969.[25] After a number of requests for a report on these cases, the Commission was informed on September 25, 1969 that the Department of Justice had determined that the cases lacked prosecutive merit.[26] Commission staff review of the investigative files indicated that in neither case were the officers involved interviewed and that insufficient efforts were made to obtain an interview with one of the alleged victims, Jesus Dominguez. The file also contained no record of the outcome of criminal charges pending against Mr. Dominguez and arising from the same incident.[27] The investigation of Salvador Barba's complaint did not include an independent check of his medical record nor an interview with persons his mother claimed had witnessed the incident. Instead, the agents relied entirely on local police interviews with these witnesses and with doctors who had treated Salvador Barba. The victim's complaint and the local police investigation record contained inconsistencies which were never resolved by Federal investigation.

Some Mexican Americans also accused agents of bias during their questioning of complainants. A young Mexican American from Uvalde, Texas, complained of being mistreated and beaten by a Uvalde County Deputy Sheriff. In a sworn affidavit, the complainant states that the Federal agents who contacted him called him a "damn liar." [28]

Alfred Figueroa, a Mexican American resident of Blythe, California, complained to the FBI that he had been beaten by the local police.[29] Figueroa told the California State

[18] Department of Justice press release, June 28, 1968. Since a violation of Section 242 is only a misdemeanor, the Department of Justice may start a prosecution under it either by indictment or the filing of an information. Fed. Rules of Crim. Procedure 7(a). Subsequently the Department of Justice withdrew the information which had been filed and proceeded to seek an indictment of Patrolman Gerth from the Del Rio grand jury. The grand jury refused to return an indictment on Feb. 1, 1969. According to Ted Butler, U.S. attorney in San Antonio, the grand jury did not return an indictment because Mrs. Fuentes testified that the other patrolman, who accompanied Patrolman Gerth, hit her husband. (If that is the case, it is not clear why the other patrolman was not indicted.) Telephone conversation with Ted Butler, Feb. 5, 1969. According to Gabriel Gutierrez, an attorney who was employed by the Civil Rights Division of the Department, Fuentes himself speaks poor English and his own testimony could not be adequately presented to the grand jury in the absence of a Spanish-speaking attorney from the Department. The Fuentes case was presented to the grand jury a week after Gutierrez, one of the few Spanish-speaking attorneys at the Department, left the Department. Telephone conversation with Gabriel Gutierrez, Apr. 9, 1969.

[19] *Supra* pp. 3–4.

[20] *Supra* p. 6, n. 25.

[21] Letter from John Doar, Assistant Attorney General for Civil Rights, to Howard A. Glickstein, General Counsel of the Commission, Nov. 8, 1967.

[22] She allegedly moved because of police action following the incident. Interview with Gene Hill, Albuquerque, N. Mex., Feb. 5, 1968. A number of charges had been filed against them. They were all dismissed, however, except for a disorderly conduct charge against Mrs. Douglas. She was convicted and fined $50, but the fine was suspended. *Id.*

[23] Letter *supra*, n. 21.

[24] See *supra* chap. 1.

[25] Letter to the Honorable Ramsey Clark, Attorney General, from Howard A. Glickstein, Acting Staff Director of the Commission, Jan. 8, 1969.

[26] Letter from David L. Norman, Deputy Assistant Attorney General, Civil Rights Division, to Lawrence B. Glick, Acting General Counsel of the Commission, Sept. 25, 1969.

[27] Two trials of charges against Dominguez resulted in hung juries. Subsequently, the district attorney dismissed all charges against him. See chap. 1, no. 21.

[28] Affidavit of Gilbert Chapa de Leon, Jan. 6, 1969, in the Commission's files. This complaint has been submitted to the Department of Justice and is currently under investigation.

[29] See *supra* p. 3.

Advisory Committee that the agent who came to see him showed clearly that he did not believe his story and asked whether he might not have been under the influence of drugs. Figueroa who has fought the use of drugs by members of the Mexican American community was shocked and insulted by this allegation and refused to continue talking to the agent.[30] The investigation did not result in any Federal action.

Processing of complaints

Permission was obtained from the Department of Justice for Commission legal staff to review its investigative files of complaints from the Southwest involving Mexican Americans. The Department authorized staff members to review inactive ["closed"] files involving complaints made since January 1, 1965, a cut-off date chosen by the Commission.[31] Commission review of the Department's files showed that 256 such complaints have been investigated from January 1965, to June 1969. About 100 files were reviewed and summarized by Commission staff members.

Each of these files contained the reports of at least a preliminary investigation of the complaint by the Federal Bureau of Investigation, as well as a statement of the Department of Justice's grounds for closing the file. Some contained records of local action taken. Only one example of a full investigation was found among the files reviewed.

There have been very few prosecutions of police officers under 18 U.S.C. 242 based on complaints by Mexican Americans. Only two such cases appear to have been brought, one a current prosecution and the Fuentes case noted above.[32] The principal obstacle to more frequent prosecution is lack of adequate proof of the allegations in the complaints.[33] More aggressive initial investigation and more frequent reinvestigation by Department of Justice attorneys could potentially have produced such evidence in additional cases. In most cases reviewed, the statements of the victim and of the officer involved were in direct conflict. In most cases the victim claimed that an officer used excessive force to effect his arrest or attacked him after his arrest. The officer most commonly claimed that the victim resisted arrest or threatened him physically and that, although force was used against the victim, it was no more than was reasonable under the circumstances. In view of these conflicting statements, determination as to whether there has been a violation of 18 U.S.C. 242 can only be made on the basis of independent evidence or an assessment of the credibility of the statements of the direct participants, especially since the question is often not whether force was used, but whether the force used was excessive under the circumstances.

Commission review of the files raised the question of whether the Department's standards of what constitutes independent evidence might not be too rigid. In several instances, members of the victim's family made statements which corroborated the victim's claim that excessive force was used but no effort was made to interview these witnesses to assess their credibility. For example, a Mexican American family called the police because one of its members collapsed from alleged drunkenness. When the chief of police arrived, according to their statements to the FBI, he beat the victim unconscious with his gun. It was determined that the case lacked prosecutive merit on the ground that there was no independent evidence of whether the victim's injuries were inflicted by the chief of police or by the fall he had suffered before the chief's arrival. Members of the family could have testified to events before the chief's arrival and medical evidence uncovered by the FBI investigation tended to confirm that the injuries were the result of a beating. The incident occurred late at night and there were no witnesses other than members of the family.

In other cases, which were not prosecuted, friends of the victims witnessed their arrests and could testify as to the events which took place during the arrests. These potential witnesses, like the victims themselves, were usually Mexican Americans. They were often poor, and occasionally they had themselves been involved with the police on previous occasions. However, whatever information they had could have been obtained and evaluated.

In some instances, not all of the potential witnesses were located or interviewed by the Bureau and Department attorneys did not re-

[30] Los Angeles T. at 278–9.

[31] Letter from David L. Norman, Deputy Assistant Attorney General, Civil Rights Division, to David Rubin, Acting General Counsel of the Commission, Apr. 7, 1969.

[32] Norman interview.

[33] *Id.*

quest that they be interviewed. In one case, for example, a Mexican American who was arrested for alleged drunkenness claimed that upon his release he was hit by two officers, but the officers asserted that he stumbled because he was still drunk. The victim's brother-in-law, who was present at the time of his release, was not interviewed.

None of the files reviewed indicated that attorneys had reinterviewed either the victim or the officer before the decision was made that the case lacked prosecutive merit, notwithstanding the fact that in a number of cases, the officer's statement would appear to lack credibility. Claims that the victim was injured because he fell or stumbled during arrest were so frequent and made under such diverse circumstances as to be suspect. Other explanations of injuries suffered by arrested persons were difficult to believe. In one complaint, in which it was alleged that an officer beat a Mexican American in a cell at the stationhouse, the officer claimed that the prisoner attacked him after he removed his handcuffs and that the victim's serious injuries were received while the officer had to fight his way out of the cell. Although the stationhouse was filled with other officers, this particular officer did not call for assistance and claimed that it was department policy to have only one officer remove prisoners' handcuffs.[34] Reinterviewing witnesses in such situations might be useful, as shown by the example of the Fuentes case, previously described. Even without a witness, in some cases the victim's testimony might be more convincing than the officer's, with the result that such cases might have been successfully prosecuted.[35]

Several law enforcement officers were the subject of more than one complaint. The Commission's review, however, showed no evidence that the number of complaints against the same officer influenced the decision of whether or not to prosecute a case against him. Nevertheless, it would seem reasonable to assume that complaints against an officer who is the subject of several complaints should be investigated more carefully than others.[36] Preventive methods of dealing with officers who may be unfit to serve could avert needless tragedies. Some of the law enforcement officers involved in the Pecos and Uvalde incidents already described [as well as in the south Texas incident described in chapter 1] had figured in other complaints. A San Antonio policeman who was the subject of three complaints by Mexican American juveniles was shot and killed by a young Mexican American whom he arrested. Although it is not known whether his reputation in the Mexican American community bore any relation to his death, a different course of action might have averted this outcome.

Generally, the investigative file shows whether any local complaints were filed against an officer and whether any local action was taken against him as a result of these complaints. Although the stated policy of the Department is to prosecute violations even if an officer has been subject to local disciplinary action,[37] no cases in which this had occurred were found. In most cases, the local proceedings, whether administrative or judicial, did not result in any adverse finding, and the Department's investigation often was limited to reviewing a transcript of these proceedings. While it may be justifiable for the Department to concentrate its efforts on those communities which make no efforts to punish those guilty of police abuses, to place too much reliance on local action subverts the purpose of the Federal remedy. Minority citizens may not obtain adequate redress of their grievances at the local level and, therefore, Federal enforcement should be independent.

The necessity for independent Federal action is illustrated by a case which involved a Mexican American who was shot and killed by a San Antonio policeman. The case was presented by the local prosecutor to the local grand jury, which recommended that the officer not be indicted for his actions. Two years later, the Department of Justice closed its investigative files

[34] The other officers present at the stationhouse all stated that they were aware of the struggle but did not intervene.

[35] Although no cases were found where an indictment was sought in a one-to-one situation [where the case rested on the testimony of the victim and the officer alone], David Norman stated that such cases should be presented to a grand jury.

[36] This question was discussed with David Norman, Deputy Assistant Attorney General of the Civil Rights Division, during the interview of July 14, 1969, *supra* n. 4. Norman said that soonor or later such officers are caught in flagrant violation of 18 U.S.C. 242. He cited Sheriff Jim Clark of Selma, Alabama, as an example. In the anonymity of a large Southwestern city evidence of flagrant violations is not as likely to come to national prominence, even though an officer may continue to violate the law.

[37] Norman interview.

on this case with the reason (among others) that "prosecution of a white [sic] police officer for the shooting of a Mexican [American] would have little chance of successful prosecution in the Southern District of Texas." This statement is contrary to the purposes of Federal civil rights legislation.

Finally, a review of the investigative files occasionally shows a tolerance for illegal police action which seems incompatible with a clear commitment to enforcing 18 U.S.C. 241 and 242. In one case, the U.S. attorney recommended against prosecution even though in his words "technically more than reasonable force may have been used". The Department accepted his recommendation.[38] According to the FBI investigation, the victim suffered a severe beating.

In several other cases, verbal resistance to arrest and verbal provocation or abuse were considered sufficient to justify the use of force by law enforcement officers. In still another case, officers seeking to arrest a young Mexican American for a minor traffic violation, broke down the door of his house and arrested and beat his older brother who refused to let them into the house. According to the investigative report, the only charge against the older brother was that of resisting arrest. A local judge dismissed the charge and admonished the officers for the arrest. But the local U.S. attorney recommended against prosecution because "the officers' actions were consistent with their duty to take subject into custody". He added that it "would have been nicer" [sic] if the officers had obtained a warrant before entering the victim's residence. The Department of Justice agreed with his recommendations.

In a recent interview, Attorney General John N. Mitchell was quoted as saying:

"I don't conceive it to be a function of the Department of Justice to be a policeman of policemen . . .".[39]

However, the Commission believes that the Department of Justice must perform that function if it intends to properly meet the legal requirements of 18 U.S.C. 242 and give to minorities the legal rights afforded them by this law.

Summary

The principal Federal criminal sanction against unlawful action by law enforcement officials is 18 U.S.C. 242. This statute prohibits State officials from depriving individuals of their constitutional rights. It is enforced by the Civil Rights Division of the Department of Justice. Investigations for the Department are handled by the Federal Bureau of Investigation.

More aggressive investigations, taking into account prior complaints against the same officer and showing less deference to local action, can make this sanction more effective.

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[38] The local U.S. attorney reviews every case under 18 U.S.C. 242 with the Department. His recommendation as to its disposition is usually, although not invariably, followed by the Department. Norman interview. For a discussion of the role of the U.S. attorney in such cases, see the Commission's 1961 report on *Justice*, at 64, *supra* n. 3, Preface.

[39] N.Y. Times, Aug. 10, 1969, § 6, Part I (magazine), at 75.

PART II. THE JUDICIAL PROCESS

Chapter 5

Jury Exclusion

The Commission found serious and widespread underrepresentation of Mexican Americans on grand and petit juries in State courts in many areas of the Southwest.[1]

Qualifications of jurors

In the five Southwestern States covered by this study (Arizona, California, Colorado, New Mexico, and Texas), both grand jurors and petit [trial] jurors must be 21 years of age and citizens of the United States. All of the States require residency of varying lengths and all of them disqualify for jury service persons convicted of felonies.[2] Arizona, California, and Colorado require ability to speak and understand English.[3] Texas requires jurors to be able to read and write.[4] New Mexico alone, by statute, does not require jurors to speak or understand English. All the States except Colorado require jurors to be of sound mind, a requirement to which Texas and Arizona add that of "good moral character".[5] Until 1969, Texas had the unusual requirement that a juror be a freeholder or householder or the wife of such a person.[6]

Generally, juries are selected from lists of eligible jurors compiled by jury commissioners appointed for that purpose.[7] No mandatory statutory direction is given as to the source of names to be included in the list, except in Texas, where in specified populous counties jury lists have to be compiled from tax lists.[8] The Arizona and New Mexico statutes require that voting lists be made available to jury commissioners for their use in compiling jury lists. In Colorado, tax lists may be used.[9]

The actual practice for compiling such lists varies widely. In Denver, Colorado, a city directory is used.[10]

Voting registration lists are used in Tucson, Arizona, but the superior court clerks call jurors by telephone, thereby restricting jurors to those who are listed in a telephone directory.[11] In Los Angeles, municipal and superior court jury lists are compiled from voting lists.[12]

From these lists, a pool of eligible jurors (called the *venire*) is summoned when the services of a grand or petit jury are required. In the case of petit jurors, the litigants may challenge a certain number of potential jurors either for

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[1] Since 1880, the principle has been established that exclusion of persons from jury duty on the basis of race or color violates the equal protection clause of the 14th amendment to the Constitution. *Strauder v. West Virginia,* 100 U.S. 303 (1880); *Ex Parte Virginia,* 100 U.S. 339 (1880); *Virginia v. Rives,* 100 U.S. 313 (1880). Since 1875 such exclusion also has been a Federal crime, in violation of the Civil Rights Act of 1875 (18 U.S.C. 243). In 1954, in the case of *Hernandez v. Texas,* 347 U.S. 475, the Supreme Court held that this principle extends to the exclusion of Mexican Americans on the basis of their ancestery or national origin.

Systematic exclusion of identifiable groups in society other than racial or ethnic groups (day laborers or women, for example) has been held to violate the equal protection clause. See e.g., *Thiel v. Southern Pacific Co.,* 328 U.S. 217 (1946) (Juries may not exclude daily wage earners on a systematic basis); *White v. Crook,* 251 F. Supp. 401 (M.D. Ala. 1966) (State may not exclude women from serving on juries).

Not only is discrimination in the selection of jurors barred, but defendants are entitled to a jury drawn from a cross section of the community. *Smith v. Texas,* 311 U.S. 128, 130 (1940). However, an accused does not have the right to demand that a particular jury which tries him should proportionally represent his race or ethnic group. *Cassel v. Texas,* 339 U.S. 282, 286 (1950).

[2] Ariz. Rev'd. Stats. § 21–201 (1956); Cal. Code Civ. Proc. § 198 (West 1954); there is an additional requirement for grand jurors to be "of fair character and approved integrity," Cal. Penal Code § 897 (West Cum. Supp. 1968); Tex. Stats. Ann. § 19.08 (Additional Supp. 1969) (grand jurors); Tex. Civ. Stats. § 2133 (Additional Supp. 1969) (petit jurors); N. Mex. Stats. Ann. § 19–1–1 (1953); Colo. Rev'd. Stats. § 78–1–1 (1963).

[3] Ariz. Rev'd. Stats. § 21–201 (1956); Cal. Code Civ. Proc. § 198 (West 1954); Colo. Rev'd. Stats. § 78–1–1 (1963).

[4] Tex. Stats. Ann. § 19.08 (Additional Supp. 1969) (grand jurors); Tex. Civ. Stats. § 2133 (Additional Supp. 1969) (petit jurors).

[5] *Supra* n. 2.

[6] Tex. Stats. Ann. § 19.08 (1966), *as amended,* Tex. Stats. Ann. § 19.08 (Additional Supp. 1969) (grand jurors); Tex. Civ. Stats. § 2133 (1964), *as amended,* Tex. Civ. Stats. § 2133 (Additional Supp. 1969) (petit jurors).

[7] Colo. Rev'd. Stats. § 78–2–1 (1963); N. Mex. Stats. Ann. § 19–1–6 (1953); Tex. Civ. Stats. §§ 2104–11 (1964), Tex. Civ. Stats. § 2094 (Additional Supp. 1969) and Tex. Civ. Stats. §§ 2095–96 (1964). In Arizona, the county boards of supervisors act as jury commissioners. Ariz. Rev'd. Stats. § 21–301 (Additional Supp. 1969). In California, the use of jury commissioners by the superior courts is optional and the judges may compile their own list. Cal. Code Civ. Proc. § 204a (West Additional Supp. 1969).

[8] Tex. Civ. Stats. § 2094 (Additional Supp. 1969) and Tex. Civ. Stats. §§ 2104 and 2107 (1964).

[9] Ariz. Rev'd. Stats. § 21–301 (Additional Supp. 1969); N. Mex. Stats. Ann. § 19–1–3 (1953); Colo. Rev'd. Stats. § 78–2–1 (1963).

[10] See *infra.* p. 37.

[11] Interviews with Anthony Ching, Mar. 5, 1968; Manuel Garcia, Mar. 5, 1968; and Hector Morales, Mar. 6, 1968.

[12] Telephone interview with Douglas Lathrop, jury commissioner for the municipal courts, June 25, 1969; Stanford Bidden, assistant jury commissioner for the superior courts, June 25, 1969.

cause (such as bias or failure to meet statutory requirements) or peremptorily (for no cause).[13] The jurors who remain constitute the "jury panel."

Petit juries

Underrepresentation of Mexican Americans—At the Commission's San Antonio hearing, David Rubin, the Commission's Acting General Counsel, asked Matt Garcia, a lawyer who had practiced law in Texas for 18 years, about his experience with petit juries:

> Mr. Rubin: Could you tell us how many cases you have tried, roughly, in southern Texas?
> Mr. Garcia: Hundreds.
> Mr. Rubin: Hundreds of cases?
> Mr. Garcia: Yes.
> Mr. Rubin: And in how many of these cases have Mexican Americans actually served on juries?
> . . . . .
> Mr. Garcia: . . . I really can't remember a single case other than possibly a case that I tried in Federal court in Del Rio, here in later years, where a Mexican American actually served on the jury.[14]

Mike Gonsalez, a lawyer who practiced with Garcia for a time, was asked the same question. Gonsalez had tried cases in Uvalde, Maverick, Zavalla, Dimmitt, Real, Val Verde, Kinney and other counties in southern Texas which had large Mexican American populations.[15] Of the hundreds of jury cases he tried in those counties during the previous 10 years, he could not recall a case in which a Mexican American served on the jury.[16]

Other persons confirmed this testimony concerning petit juries in south Texas. R. P. Sanchez, a lawyer in McAllen, Texas, said that although the population of Hidalgo County was about 75 percent Mexican American, only one or two Mexican Americans served on juries.[17] Dr. Ramero Casso, a prominent member of the local Mexican American community in McAllen, agreed.[18]

In Phoenix, Arizona, Jess Cuellar, a probation officer in the superior court, stated that in 95 percent of all trials in the superior court in Phoenix no Mexican Americans sat on the jury although Phoenix was over 6 percent Mexican American according to the 1960 census.[19] Armando De Leon, a Phoenix attorney, believed that a serious problem of jury exclusion existed throughout the State.[20] In Tucson, Arizona (17 percent Mexican American), two attorneys and a city councilman confirmed that very few Mexican Americans sat on juries.[21]

In Colorado, Mexican Americans claimed that members of their group were underrepresented on juries in rural areas.[22] In Denver, jury panels are made up by random selection from names contained in the city directory, an annual compilation listing all adult residents in the city. The directory contains over one-third more names than the local voting lists and, according to the Denver Jury Commissioner, results in juries which represent a good cross section of the community.[23]

In Albuquerque, New Mexico, lawyers stated that there was no jury discrimination in the State courts and that Mexican American representation on State juries was better than on Federal juries before the latter were reformed by the Federal Jury Selection and Service Act of 1968.[24] In Fort Sumner, New Mexico, however—an area more than 60 percent Mexican American—a Commission staff member was told by several local Mexican Americans that no Mexican Americans serve on juries.[25]

In Los Angeles, the public defender,

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[13] See discussion *infra* p. 38.
[14] San Antonio Hearing at 665–66.
[15] According to the 1960 census more than 50 percent of Maverick, Zavalla, and Dimmitt Counties is Spanish surnamed; more than 35 percent of each of the other counties is Spanish surnamed except for Real, which is more than 10 percent Spanish surnamed.
[16] San Antonio Hearing at 666.
[17] Interview with R. P. Sanchez, June 27, 1968.
[18] Interview with Ramero Casso, June 1968.
[19] Interview with Jess Cuellar, Feb. 27, 1968.
[20] Interview with Armando De Leon, Mar. 1, 1968.
[21] Interviews, *supra* n. 11.
[22] Interview with Carlos Lucero, Dec. 11, 1967; Henry Trujillo, Dec. 13, 1967. Mr. Trujillo attributed lack of representation to unwillingness of Mexican Americans to serve as much as to discrimination.
[23] Interview with Joseph Horgan, Nov. 13, 1967.
[24] See *infra* n. 85; interviews with John Burciaga, Feb. 27, 1968; Charles Driscoll, Feb. 28, 1968; Paul Phillips, Feb. 6, 1968.
[25] Interview with Jose Val Vede, (group meeting) Feb. 28, 1968.

Richard S. Buckley, told the California State Advisory Committee that, although the trial juries in Los Angeles County are selected from lists based on voter registration lists, he does not think that juries are as representative of the Mexican American population as one would expect. He stated: "I recall very few Mexican Americans on any juries I have tried in a period of 15 years." [26]

A lawyer practicing in Los Angeles, however, stated that in East Los Angeles [a predominantly Mexican American area] many of the persons called for jury duty are Mexican American. He said that this situation is "unique" in the county.[27]

Use of peremptory challenge—Use of peremptory challenge in both civil and criminal cases [28] to eliminate the few Mexican Americans found on petit jury venires was the source of frequent complaints.[29] At the Commission's San Antonio hearing, Mr. Garcia explained how the combination of a small number of Mexican Americans on the venire list, often placed at the end, and the use of the peremptory challenge made it possible for the prosecution to assure that there are no Mexican Americans on the jury:

> [W]hen you walk into the courtroom, why, the judge is always very amiable, opposing counsel is always very amiable, and all the clerks are amiable, but when you get handed that jury list and you see maybe two Mexican Americans in a list of 28, and both of them are very appropriately—insofar as the State is concerned—very appropriately placed so far down that you're not going to get to them, or placed in such a position that the State need only use a very small number of their challenges. In other words, to strike them from the panel. And I'm speaking of areas where the percentage of Mexican Americans exceeds 50.[30]

Pete Tijerina, an attorney in San Antonio, stated that he was counsel for a Mexican American plaintiff in a negligence case tried in Jourdanton, Texas in March of 1966. Jourdanton is 65 percent Mexican American. Finding that on a venire of 48 jurors only one was Mexican American, Tijerina sought and received a trial continuance until July in the hope that a new jury venire would be more representative. Two Mexican American names appeared on the July venire list, but investigation showed that only one of these persons was alive. Tijerina again asked for and was granted a delay. In December, five Mexican Americans were among the 48 veniremen. All five were peremptorily challenged by the defendant's insurance company's lawyers. Tijerina then settled the case for an amount which he believed was much lower than what was warranted by the plaintiff's permanent injuries, but he despaired of getting a representative jury to try the case.[31]

James De Anda, a lawyer from Nueces County, Texas, stated that records in that county revealed that until recently prosecutors in criminal cases struck from the jury lists all Mexican American names in cases where a Mexican American was the defendant.[32] In Phoenix, Arizona, a probation officer said that the six peremptory challenges available to the prosecution invariably were used to eliminate Mexican Americans from juries when the defendant was Mexican American.[33]

In Tucson, Anthony Ching, an attorney, said that when the defendant in a prosecution is an Anglo, the few Mexican Americans who appear on jury panels usually are removed through peremptory challenges by the defense and the prosecution. When a Mexican American is the defendant, the prosecution uses its peremptory

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[26] Los Angeles T. at 202.

[27] *Id.* at 119–20.

[28] The peremptory challenge is the statutory right of the prosecutor or defense attorney in a criminal case to challenge a limited number of prospective (petit) jurors without giving any reason therefor. The number of challenges varies depending on the gravity of the charge. In some States, including Texas, litigants in civil suits also may use peremptory challenges. In capital cases, the parties may have as many as 20 challenges. (See e.g., Cal. Pen. C. § 1070 (West 1956)). In felony cases, normally each side has six. (See e.g., Ariz. Rev'd. Stats., R. Crim. Proc. Nos. 225, 226, 228 (1956).

[29] In *Swain v. Alabama*, 380 U.S. 202 (1965) the Supreme Court upheld the use of the peremptory challenge by prosecutors to remove individual Negro jurors from jury venires even if race was the principal motive for the use of the challenge because, the court held, peremptory challenges may be used for any or no cause to remove jurors. The court implied that systematic use of the challenge by a prosecutor over a long period of time to remove Negroes from jury rolls may be unconstitutional. However, the existence of such a practice was held not proved in that case.

[30] San Antonio Hearing at 665. In Texas, petit juries are chosen by jury commissioners, except in certain counties, in which they are selected from current tax lists by a committee composed of the sheriff, the county clerk and the district clerk in the county. Tex. Civ. Stats. §§ 2094–96, 2104–11 (1964) and (Additional Supp. 1969). In south Texas, allegedly, there are only one or two Mexican American jury commissioners. Interview with Mike Gonsalez, Dec. 9, 1968.

[31] Interview with Pete Tijerina, Apr. 9, 1968.

[32] Inter-Agency Committee on Mexican American Affairs, *The Mexican American: A New Focus on Opportunity*. Testimony presented at the Cabinet Committee Hearings on Mexican American Affairs, El Paso, Tex., Oct. 26–28, 1967 [hereinafter cited as Cabinet Committee Hearings] at 218.

[33] Interview with Jess Cuellar, Feb. 27, 1968.

challenges to prevent Mexican Americans from serving on the jury.[34] Manuel Garcia, another Tucson lawyer, said that it was unusual for a panel of 24 prospective jurors to contain as many as six Mexican Americans but, if it did, they were removed by the prosecutor's peremptory challenges.[35]

Manuel Aranda, a Mexican American lawyer practicing in Los Angeles since 1965, described the use of the peremptory challenge by prosecutors in cases involving Mexican American defendants as follows:

> It turns out to be a game trying to get your Mexican American juror on as the district attorney tries to get him off, and if you are in East Los Angeles [a predominantly Mexican American area] it works out all right because eventually you can't dismiss everybody, but if you move into . . . any other jurisdiction outside of East Los Angeles . . . if you have one [Mexican American on the venire], that one would automatically, or in all my cases, have been eliminated [by] . . . a peremptory challenge.[36]

Grand juries

Texas—One lawyer practicing in south Texas expressed the view that Mexican Americans had appeared on grand juries in that area only recently and then merely in token numbers.[37] In San Antonio, more Mexican Americans sat on grand juries, but several attorneys complained that the same names appeared again and again.[38]

California—A study of the extent to which persons of Spanish surname have served on grand juries in California was done under contract to the Commission by California Rural Legal Assistance, Inc., (CRLA) in June 1968.[39] In California, grand jurors have the authority both to indict persons for crimes and to investigate and evaluate the administration of local government.[40] Because of this broad authority, exclusion of Mexican Americans from grand juries not only may affect their ability to receive fair and impartial criminal justice, but also is likely to render grand juries less vigorous in inquiring into and exposing governmental deficiencies—in police departments and school systems, for example—adversely affecting Mexican Americans.

In California, to qualify as a grand (or trial) juror a person must be a resident citizen, over 21, of ordinary intelligence and "possessed of sufficient knowledge of the English language" to understand grand jury proceedings.[41] Although California law authorizes the use of jury commissioners to compile grand jury *venire* lists, the general practice seems to be selection from a list personally prepared by the Superior Court judges.[42]

The CRLA study, which covered the 20 counties with the highest percentage of Spanish surname population, showed underrepresentation of Spanish surname people on the grand juries of every county studied.[43] In every county studied, the percentage of Spanish surnamed grand jurors over a period of 8 to 12 years was significantly less than the Spanish surname percentage of the county's population. In no county did the percentage of Spanish surnamed grand jurors equal or exceed the Spanish surnamed eligible persons in the county.

The counties in which these percentages came closest to each other, such as Yolo (population 9.7 percent, grand jurors 5.3 percent Spanish surnamed), Santa Clara (population 11 percent,

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[34] Interview with Anthony Ching, Mar. 5, 1968.

[35] Interview with Manuel Garcia, Mar. 5, 1968.

[36] Los Angeles T. at 120.

[37] Interview with Mike Gonsalez, *supra* n. 30. Most counties in south Texas are heavily populated by Mexican Americans. The majority are over 50 percent Mexican American and very few have a population which is less than 35 percent Mexican American. See *supra* n. 15.

[38] Interview with Pete Tijerina, Apr. 9, 1968; John Alaniz and Peter Torres, Apr. 10, 1968.

[39] Reprinted herein as Appendix B (hereinafter cited as CRLA report).

[40] Cal. Pen. C. §§ 919 (b) and (c), 925, 928, 933–5 (West 1955) (Cum. Supp. 1967).

[41] CRLA Report at 114 and statutes and cases cited therein.

[42] *Id.* For a discussion of methods used by judges to prepare such lists, see *infra* at 43 *et seq.*

[43] CRLA Report, at 29–44. For the purpose of the study, CRLA obtained the lists of names of grand jurors in 18 of the 20 counties studied for at least 10 years between 1957 and 1968. In 15 of these counties, records were available for the 12-year period 1957–68. In two additional counties, records were only available for 7 and 8 years, respectively and in lieu of a greater period these figures were used (p. 116). In each of the 20 counties, the grand jurors who actually served were compared to the percentage of Spanish surnamed persons in the population (p. 117). For purposes of the study, this percentage was reduced by the estimated number of Spanish surnamed persons who were not U.S. citizens and therefore not eligible for jury duty (p. 117). The authors also took into consideration the fact that persons under 21 were not eligible for jury duty and attempted to account for that factor in estimating the eligible Spanish surnamed population in each county (p. 117).

The study also covered two additional counties which contained the largest percentages of Indian population. It showed that Indians were underrepresented on the grand juries of each of these counties. In one of the two counties, no Indian served on any grand jury during the period studied. Since the CRLA study's initiation, five Indians were examined as veniremen in that county, according to the report. CRLA report at 118.

grand jurors 5.7 percent Spanish surnamed), and Merced (population 13.6 percent, grand jurors 6.3 percent Spanish surnamed) still excluded 11 to 30 percent of the eligible Spanish surnamed population from grand jury service. Other counties such as Fresno (population 14.5 percent, grand jurors 1.3 percent Spanish surnamed) and Orange (population 6.3 percent, grand jurors 0.4 percent Spanish surnamed) excluded more than 80 percent of the eligible Spanish surnamed population.[44]

On the theory that 3:1 disparities between the percentages of eligible minority persons in the community and of minority grand jurors for 10 years or more raise a presumption of unconstitutional selection, the study concluded that such a presumption was raised in 15 of the 20 counties studied.[45]

In four of the counties, the disparity was more than 10:1 between Spanish surnamed population and Spanish surnamed jury service—the actual disparities in Colusa, Orange, Monterey, and Fresno Counties being 16.6:1, 15.8:1, 13.9:1 and 11.5:1, respectively. In these counties, 89 percent of the eligible Spanish surnamed population had been excluded from grand juries, a figure comparable to the proportion of Negroes excluded in cases arising in the Deep South.[46]

In Los Angeles County, with almost 500,000 eligible Spanish surnamed residents, only four served as grand jurors during the 12 years studied,[47] while Orange County, California's fifth largest (eligible Spanish surname population estimated at 44,000) had only one Spanish surnamed person on its grand jury lists in the 12-year period.[48] Monterey County, with 23,118 Spanish surnamed inhabitants, had one Spanish surnamed grand juror during the 12 years. Additional research showed that this juror was Spanish, rather than Mexican American, and that no other Spanish surnamed juror had served in the 30 years from 1938 to 1968.[49]

The study encompassed analysis of 224 grand juries in the 20 counties covered. During the 12 years from 1957 through 1968, in only 18 of these grand juries did the percentage of Spanish surnamed jurors approach or exceed the Spanish surnamed percentage of the general population. In the other 206, the Spanish surnamed percentage of grand jurors fell markedly under the Spanish surnamed percentage of the population.

The role of nondiscriminatory factors in underrepresentation of Mexican American jurors

English language—The authors of the CRLA report tried to anticipate explanations that might be advanced by judges or jury commissioners for the absence of Mexican Americans from grand jury rolls. One reason that has been given to explain the dearth of Spanish surnamed grand jurors in the Southwest is the language handicap among the Spanish surnamed group.[50] The CRLA report discounted this explanation for the absence of Spanish surnamed persons in California because the greatest incidence of lack of knowledge of English probably occurs among noncitizens who were not included in the study's computation of the eligible population [51] and also because this explanation was not advanced by any of the witnesses at 1967 California Assembly Hearings on the grand jury, who were familiar with problems of grand jury selection.[52]

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[44] CRLA Report, Tables II and III.

[45] CRLA attempted to determine statistically whether the disparity between the percentage of Spanish surnamed jurors and the percentage of eligible Spanish surnamed persons was consistent with the theory of random selection of jurors. The authors of the study concluded that "the principles espoused both by judges and mathematicians would indicate that a long continued disparity of 3:1 or more between the percentage of minority grand jurors and the minority group percentage of the community raises a presumption of unconstitutional selection" (pp. 114–15)—a presumption rebuttable by a reasonable nondiscriminatory explanation of the disparity.

[46] For example, in Colusa County, 8.3 percent of the eligible population is Spanish surnamed, but only 0.5 percent of the grand jurors were Spanish surname during the period studied. In Fresno County, 14.5 percent of the population, compared to 1.3 percent of the grand jurors, were Spanish surnamed. Compare *Sims v. Georgia*, 389 U.S. 404 (1967) where 24.4 percent of the taxpayers but only 9.8 percent of the veniremen were Negroes, and *Whitus v. Georgia*, 385 U.S. 585 (1966) where 27.1 percent of the taxpayers and 9.3 percent of the veniremen were Negroes. In both cases, a *prima facie* case of discrimination was held to be made out.

[47] CRLA Report at 120.

[48] *Id.*

[49] *Id.* at 119.

[50] Interviews with Elizabeth Conour, Dec. 11, 1967 and R. P. Sanchez, June 27, 1968. New Mexico alone of the five Southwestern States included in this study does not require jurors to be able to speak or understand English. Ariz. Rev'd. Stats. § 21–201 (1956); Cal. Code Civ. Proc. § 198 (West 1954); Colo. Rev'd. Stats. § 78–1–1 (1963); Tex. Civ. Stats. § 2133 (Additional Supp. 1969); Tex. Stats. Ann. § 19.08 (Additional Supp. 1969).

[51] CRLA Report at 121. All five Southwestern States included in this study require jurors to be U.S. citizens. Cal. Code Civ. Proc. § 198 (West 1954); Cal. Pen. C. § 897 (West Cum. Supp. 1968); Ariz. Rev'd. Stats. § 21–201 (1951); Colo. Rev'd. Stats. § 78–1–1 (1963); N. Mex. Stats. Ann. § 19–1–1 (1953); Tex. Stats. Ann. § 19.08 (Additional Supp. 1969) and Tex. Civ. Stats. § 2133 (Additional Supp. 1969).

[52] CRLA Report at 121.

Educational levels of Mexican Americans suggest that a large number qualified for jury duty. In *U.S. v. Rabinowitz*,[53] the majority opinion suggested that 6 years of school completed may be considered as a standard in judging ability to read, write, speak, and understand English. Completion of the sixth grade was adopted as a presumptive standard of literacy (in English or Spanish) by Congress in a section of the Voting Rights Act of 1965 dealing with voting rights of Puerto Ricans.[54] Experts who testified in *U.S. v. Hunt*,[55] a case which involved claims of exclusion of Mexican Americans from juries in San Antonio, Texas, proposed that 5 years of school be used as a standard in jury cases.

According to the 1960 census, Spanish surnamed persons over 25 in the Southwest completed 7.1 median years of schooling.[56] In each of the States except Texas, the median years completed exceeded 6 years.[57] In Texas, in 1960, the Spanish surnamed population aged 25 and over had a median schooling of 4.8 years; however, of the Spanish surnamed group aged 20 to 49, 65.7 percent of the women and 65.3 percent of the men had completed from five to 11 primary grades in 1960.[58] Thus, even though the average schooling of Mexican Americans in Texas may not be high, a large number—more than 320,000—still meet the presumptive standard of eligibility for service.

Throughout the Southwest, the level of education of Spanish surnamed persons in urban areas was considerably higher than in rural areas.[59] Thus, there may be rural counties—especially in Texas, where the median is lower than in other States—where language may in fact be a substantial factor in making Mexican Americans ineligible for jury service.[60]

In the 19 southernmost Texas counties which had more than 50 percent Spanish surnamed populations in 1960 (except for Kleberg, Nueces, and San Patricio which ranged from 35 to 50 percent Spanish surnamed), the median level of education of Spanish surname persons was less than 5 years except in Duval and Webb Counties. There it was 5.1 and 5.4 years respectively.[61] However, in each of these counties, there were hundreds and in some cases thousands of Spanish surnamed persons who had completed from 5 to 7 or more years of schooling (including, in many cases, high school and college) which presumptively qualify them to serve as English-speaking jurors.[62]

For example, in Bee County, Texas, although the median education of the county's more than 8,500 Spanish surnamed persons was only 3.3 years, in 1960 1,199 or 14 percent of these persons had had at least 6 years of schooling. In Starr County, 2,094 Spanish surnamed persons over 25 [more than 19 percent of the Spanish surnamed population] had had more than 5 years of schooling. In some of the south Texas counties mentioned as not having Spanish surnamed jurors—Uvalde, Maverick, Zavalla, Dimmitt, and Val Verde—the number of Spanish surnamed persons with more than a sixth grade education in the respective counties was 1,101, 1,888, 803, 604, and 1,852 respectively.[63] In all of the 19 counties covered, at least 8 percent and often as much as 20 percent of the Spanish surnamed population had reached that level of education.

In the 20 California counties studied in the CRLA report, in 1960 the median level of education of the Spanish surnamed population in 1960 exceeded 6 grades in all but two of the counties, Imperial and Madera, where the me-

[53] 366 F. 2d 34 (5th Cir. 1966).

[54] 42 U.S.C. 1973 (b) and (e).

[55] 265 F. Supp. 178 (D. C. W. D. Tex. 1967). The District Court in *Hunt* computed the eligibility of Mexican Americans for jury duty in Bexar County, Tex. by using both the 5 and the 6-year standards. The court held that the disparity between the percentage of Mexican American population eligible for service [15 to 17 percent of the population] and the percentage of Mexican American jurors [11 percent] was not sufficient to presume discrimination.

[56] Computations based on the U.S. Census in Grebler: *The Schooling Gap: Signs of Progress* (U.C.L.A. Mexican American Study Project Advance Report No. 7, 1967) [hereinafter Grebler] at 9.

[57] *Id.* The median years completed by Spanish surnamed persons over 25, by State, were as follows: Arizona, 7.0; California, 8.6; Colorado, 8.2; New Mexico, 7.4; Texas, 4.8.

[58] Report of the Governor's Committee on Public School Education, "The Challenge and The Chance," 1968, at 16. Younger Mexican Americans have higher levels of schooling than older ones; thus, a measure of education of the group over 20 is likely to result in a higher median than of the group over 25. See Grebler at 7–10.

[59] Grebler at 10.

[60] To the extent that the venire lists themselves exclude Mexican Americans the English ability of Mexican American potential jurors will not be tested. Thus, a reform of the method used to compile venire lists so as to include a larger number of residents can result in a significantly higher number of Mexican American jurors. For an account of such reforms in rural Nueces County, Tex., see the statement of James De Anda, an attorney from Corpus Christi, Tex., before the Cabinet Committee Hearings, *supra* n. 32.

[61] See Table I, p. 42.

[62] See discussion *supra*.

[63] See Table I, *infra*.

TABLE I

County	Total population	Spanish surnamed population	Number of Spanish surnamed persons over 25 who have completed 5 to 7 or more years of school	Percent of Spanish surnamed persons over 25 who have completed 5 to 7 or more years of school	Median level of education of Spanish surnamed persons over 25
Atascosa	18, 828	8, 545	937	11. 0	2. 5
Bee	23, 755	8, 580	1, 199	14. 0	3. 3
Brooks	8, 609	5, 928	1, 246	21. 0	4. 8
Cameron (Brownsville)	151, 098	96, 744	14, 818	15. 3	3. 9
Duval	13, 398	9, 788	2, 321	23. 7	5. 1
Dimmitt	10, 095	6, 760	604	8. 9	2. 3
Frio	10, 112	6, 250	734	11. 8	2. 3
Hidalgo (McAllen)	180, 904	129, 092	16, 636	12. 9	3. 3
Jim Hogg	5, 022	3, 861	883	22. 9	4. 5
Kleberg	30, 052	12, 514	2, 226	17. 8	4. 4
Maverick	14, 508	11, 253	1, 888	16. 8	3. 9
Nueces (Corpus Christi)	221, 573	84, 386	14, 912	8. 7	4. 5
Starr	17, 137	15, 196	2, 094	19. 3	4. 3
Uvalde	16, 814	8, 002	1, 101	13. 8	3. 4
Val Verde	27, 461	10, 814	1, 852	17. 1	3. 7
Webb	64, 791	51, 784	12, 212	23. 6	5. 4
Willacy	20, 084	13, 734	1, 461	10. 6	2. 8
Zapata	4, 393	3, 285	658	20. 0	4. 1
Zavala	12, 696	9, 440	803	8. 5	2. 3

Source: Computations based on U.S. Bureau of the Census, U.S. Census of Population 1960 PC (2) 1B, Persons of Spanish Surname, PC (1) 45 B Texas and County and City Data Book, 1962.

dian for Spanish surnamed persons was 4.3 and 5.9 respectively.[64] In Imperial County, which had 23,850 Spanish surnamed persons in 1960, 5,198 of those over 25 had completed 5 to 7 or more years of school in 1960; in Madera, that figure was 1,405 out of a total Spanish surnamed population of 6,225.[65] Thus, even in those counties, exclusion of Spanish surnamed grand jurors could not be justified solely on the basis of the English language requirement. In any event, the English language requirement cannot explain the striking disparities in grand jury service disclosed by the CRLA study in urban as well as rural areas.

Low-income—The CRLA report also considered the argument, advanced to explain the lack of minority grand jurors in California during the California Assembly hearings, that minority persons could not afford to serve.

California requires its grand jurors to serve for a full year. The salary for grand jurors is $5 a day.[66] In some counties, such as Los Angeles, grand jurors serve for an average of 3 days a week during their year of service. Several persons testified before the California Assembly Interim Committee on Governmental Efficiency and Economy that grand jury service imposes an unbearable burden on people of low-income.[67] Similarly, jury commissioners in Bexar County, Texas, where jurors are paid $4 per day,[68] were

[64] Persons of Spanish Surname, *supra* n. 1, Preface; CRLA Report Table I. In five of the 20 counties, the median level of education of the Spanish surnamed population was between 6 and 7 grades completed; in five between 7 and 8, in six over 8 but less than 9, and in Alameda and Los Angeles Counties (which are highly urbanized) the average was 9 grades of schooling.

[65] *Id.*

[66] Cal. Pen. C. § 890 (West 1956).

[67] *Hearings on the California County Grand Jury System Before the Assembly Interim Committee on Governmental Efficiency and Economy of the Calif. State Legislature:* Part I, Sacramento, Sept. 27, 1967; Part II, Los Angeles, Oct. 16, 1967; and Part III, San Francisco, Oct. 31, 1967.

[68] San Antonio Express and News. Feb. 9, 1969, p. 6–H, Col. 1. Rates of pay for jurors are similarly low in the other States studied. In Arizona, they range from $8 per day for superior court attendance to $4 per day in justice court. Ariz. Rev'd. Stats. § 21–221 (1956). In Colorado, they range from $6 for courts of record to $3 for police magistrates courts. Colo. Rev'd. Stats. § 56–6–1 (1963). In New Mexico, the rate of pay is $5 per day for all jurors. N. Mex. Stats. Ann. § 19–1–41 (1953).

concerned with financial ability of prospective jurors to serve.[69]

The CRLA report discounted this factor as an explanation for the paucity of Mexican Americans on grand juries in the counties studied. The authors believe it unlikely that only four Mexican Americans in Los Angeles earned incomes during the 12-year period sufficient to enable them to serve on grand juries. Moreover, they concluded that this argument could not be made at all with respect to the rural California counties where actual grand jury service is limited to a few weeks and is arranged at the convenience of the jurors, and where many Mexican farm workers are unemployed for several months of each year.[70]

Factors leading to discriminatory exclusion of Mexican Americans from juries

"Keyman" system—In all five States, as indicated earlier, grand and petit jurors are selected by jury commissioners, judges, or a board of elected officials functioning as a jury commission. None of the States require random selection from a specified list. This system of selection vests considerable discretion in jury commissioners and judges.[71] In a case dealing with the Texas system for choosing grand jurors, Judge John R. Brown of the U.S. Court of Appeals for the Fifth Circuit, commented:

> The Texas system . . . for constituting the grand jury is highly selective, and relying at no stage on random choice or the laws of chance, it commits much to the jury commissioners.[72]

In regard to the same system, Justice Hugo L. Black of the Supreme Court of the United States, remarked:

> . . . The Texas statutory scheme is not in itself unfair; it is capable of being carried out with no racial discrimination whatsoever. But by reason of the wide discretion permissible in the various steps of the plan, it is equally capable of being applied in such a manner as practically to proscribe any group thought by the law's administrators to be undesirable.[73]

Depositions in a recent lawsuit illustrate how easily the Texas system can be abused to result in an unrepresentative grand jury. In *Rodriguez v. Brown* the Mexican American Legal Defense and Education Fund, Inc. is challenging the selection of grand jurors in Bexar County, Texas which includes San Antonio.[74] The suit attacks the constitutionality of the "freeholder or householder" requirement in Texas as setting up an arbitrary classification based on wealth.[75] It also attacks the procedure by which grand jurors are chosen. Although plaintiffs do not claim that the proportion of Mexican American grand jurors is so far less than the proportion of eligible Mexican Americans in the community as to raise a presumption of discrimination, they do allege that the grand jury commissioners make no effort to obtain a grand jury drawn from a cross section of the community.[76] Depositions of the jury commissioners relied on by the plaintiffs show that the commissioners in their 1964, 1965 and 1968 terms met for only 1 or 2 hours, chose grand jurors from among their acquaintances, and made no effort to acquaint themselves with sections of the community beyond their own.

All of the commissioners stated that they selected people whom they knew personally. Each knew whom he would select before the commissioners met as a body.[77] A real estate and insurance man picked only "business people, reliable and responsible"; a pharmacist chose only "professional people". One grand jury commissioner wanted the "cream of the crop" on the grand jury; another picked only "outstanding citizens".[78] With one exception, each com-

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[69] *Rodriquez v. Brown,* Civ. No. 68–206–SA (D.C. W. D. Tex., filed Aug. 29, 1968). (Plaintiffs' brief.)

[70] CRLA Report at 120–21.

[71] Although none of the persons in charge of selecting jurors said that they chose higher income people because they were more liable to meet the subjective qualifications of "good character" and integrity, past studies of "blue ribbon" juries show that jury commissioners often equate desirable intellectual and moral qualities with a higher level of education and income. See e.g., *Note, The Blue Ribbon Jury,* 60 Harv. L. Rev. 613, 614 (1947) and Kuhn, *Jury Discrimination: The Next Phase* 41 So. Cal. L. Rev. 235, 268 *et seq.* (Winter 1968).

[72] *Brooks v. Beto,* 366 F. 2d 1, 4, (5th Cir. 1966). Grand jurors in Texas are chosen by jury commissioners appointed by the district judges. Tex. Stats. Ann. § 19 (1966).

[73] *Smith v. Texas,* 311 U.S. 128, 130–31 (1940).

[74] *Rodriguez v. Brown, supra* n. 69.

[75] The plaintiffs seek an injunction against the enforcement of the State law. They asked for the convening of a three-judge court under 28 U.S.C. 2281 and 2284. On May 29, 1969, a three-judge panel decided that on its face, the Texas freeholder requirement was not unconstitutional. The decision on whether the statute is discriminatory as applied will be made by the U.S. District Court for the Western District of Texas. Telephone conversation with Juan Rocha, MALDF attorney, June 5, 1969. Subsequently, in 1969, the freeholder requirement was dropped by the Texas Legislature. Tex. Stats. Ann. § 19.08 (Additional Supp. 1969).

[76] *Rodriguez v. Brown, supra,* n. 69, plaintiffs' response to defendant's motion to dismiss, at 9.

[77] *Id.* Plaintiff's memorandum brief in support of request for three-judge court at 4–5. In Bexar County each jury commission picks 20 names, from which 12 are impaneled to serve.

[78] *Id.* at 10.

missioner selected persons from his own ethnic group. Several commissioners consciously avoided submitting the names of persons who in their view could not afford to serve. Only one of the commissioners deposed, a Mexican American postal worker, made an effort to select grand jurors representing a cross section of the community by submitting the names of a housewife, a school teacher, the owner of a rest home, and a fellow employee—two Mexican Americans, one Negro, and one Anglo.[79]

In California most grand jurors are selected by superior court judges.[80] In a recent criminal prosecution in Los Angeles—in which the defendants were Mexican Americans who were being prosecuted for instigating school walkouts—their attorneys took depositions from a large number of superior court judges to ascertain how they selected grand jurors.[81]

One judge identified his nominees as friends, neighbors, church associates, and a man suggested by a fellow member of the Lions Club. Another chose neighbors, friends, business associates, and a friend of a friend. A third stated that most of his nominees were connected with the Los Angeles Tennis Club. When it was suggested that Mexican Americans were excluded from this club, he pointed out that the famous tennis players Pancho Gonzales and Pancho Segura (who in fact is of Ecuadorian origin) were members.

All of the judges questioned claimed that they had not deliberately avoided nominating Mexican Americans. Most, however, seemed wholly unaware of any requirement to select a cross section of the community for jury duty. One judge said that he had only been on the court 3 years and that after a few more years he would nominate persons from various racial groups. Several judges replied to the question of how they expected the grand jury to be representative by stating that since there is a large number of judges on the superior court, each of whom picks persons from his own ethnic group, this aim would be achieved automatically.

Some of the judges said that they had tried to find Spanish surnamed nominees with limited success. One judge said that he considered Mexican Americans to be Caucasians and made no special effort to find Spanish surnamed jurors.[82]

Until the enactment of the Federal Jury Selection and Service Act of 1968 jurors were selected in Federal courts under a system similar to the system in the Texas and California State courts. Selection of jurors was made from lists of eligible citizens compiled either by the jury commissioners themselves or with the help of prominent citizens called "keymen". The Judicial Conference of the United States found in 1967 that:

> Even if the jury commissioners or the keymen do not deliberately intend to discriminate, they often are not acquainted with citizens of some minority or low income groups, and so these individuals are never afforded an opportunity to serve. . . .[83]

The Judicial Conference also found that even where keymen made deliberate efforts to obtain a cross section of the community, such efforts failed all too frequently to result in representative panels.[84]

The Federal Jury Selection and Service Act of 1968 [85] eliminates the previous practice. Under the act, each Federal judicial district establishes its own plan for random selection from voter registration lists or lists of persons actually voting. The plan must conform to the minimum requirements set forth in the act.[86] Each district is required to establish a "master jury wheel" containing the names of persons selected at random from the voting or voter registration lists. The wheel must contain a minimum of one-half of 1 percent of the total names on the voting lists in the district. Each county in the district must be represented in the wheel.[87]

The jury panels are made up, under the new Federal procedure, by pulling the number of names required from the master jury wheel and

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[79] *Id.* deposition of Joe M. Garza.

[80] Cal. Pen. C. § 2 (West Supp. 1967). See also CRLA Report at 114.

[81] *Castro v. Superior Court of the County of Los Angeles,* filed in the District Court of Appeal, 2d District of Calif. on Jan. 24, 1969, brief for petitioners. According to the defendants in that case, out of 1,501 persons nominated for the Los Angeles County Grand Jury during the past 10 years, only 38 or 40 were Spanish surnamed. Brief for petitioners at 15. The estimated Los Angeles Spanish surnamed population is 12.4 percent. *Id.* at 17. The CRLA report estimates the eligible Spanish surnamed population at 8.1 percent. CRLA Report at 120.

[82] *Id.* at 7.

[83] Judicial Conference Report, quoted in Kuhn, *op. cit., supra* n. 71 at 254.

[84] *Id.*

[85] 28 U.S.C. 1861 (Supp. 1968).

[86] 28 U.S.C. 1863. Where voting lists are not representative of the whole population, as for example in some Southern States, other sources of names must be used.

[87] *Id.*

mailing questionnaires to the persons whose names are pulled to determine their eligibility.[88] The principal qualifications for service are that jurors must be resident citizens over 21 years of age, able to speak English, and able to read and write sufficiently to fill out the juror qualification form.[89] Eligibility is determined solely on the basis of the questionnaire.[90]

Effects of exclusion

The Commission heard allegations that underrepresentation of Mexican Americans on juries actually has the adverse effects which a jury drawn from a cross section of a community is designed to avoid, i.e., lack of public confidence in the fairness of judgments and bias on the part of the jury.

An Albuquerque lawyer related an incident which illustrates this. The lawyer represented a young Mexican American accused of a crime. Convinced of his client's innocence, the lawyer proposed to enter a plea of "not guilty" to the charge. The young man, however, thought he would be better off with a guilty plea even though he claimed he was innocent. According to the lawyer, his client said: "There isn't a working man on the jury list let alone a Spanish American. I'm not going to get a fair shake in that court." [91]

Absence of Mexican Americans from juries undermines the impartial administration of justice. An attorney in south Texas testified at the Commission's San Antonio hearing that the sole Mexican American on a local grand jury told him that accused Mexican Americans are automatically indicted, but the grand jury will consider a case against "Anglos" very carefully before deciding whether to indict him.[92]

Several lawyers asserted that it is extremely difficult to obtain the acquittal of Mexican Americans charged with narcotics offenses because juries generally assume that even if a Mexican American has not committed the particular offense charged, he has probably violated narcotics laws at some time and, therefore, find him guilty.[93]

Alva Archer, then district attorney of the 43d Judicial District in south Texas, testified at the same hearing that in 1968 he sought an indictment against a highway patrolman accused of beating two Mexican American women. The local grand jury refused to indict the officer even though it issued a statement to the effect that the officer's action was unjustified.[94] Archer testified that the grand jury was made up of substantial businessmen, farmers, and ranchers and that no Mexican Americans were on the panel. Archer was asked whether he thought that there should have been some Mexican Americans on the grand jury. He replied:

> Well, again, I am not going to criticize anyone for drawing the grand jury. I didn't have anything to do with it, but I think that it certainly would have had a different effect.[95]

In civil suits the absence of Mexican Americans from juries can also lead to bias. As a private attorney, Archer represented the plaintiff in a civil suit based on an automobile accident. The defendant had run into the plaintiff, a Mexican American. The defendant's insurance company was apparently willing to settle the claim for $3,000 but the plaintiff felt the case merited a higher recovery so he took it to court. In Archer's view the evidence was overwhelmingly against the Anglo defendant. To his amazement the jury found that the defendant

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[88] 28 U.S.C. 1864.

[89] 28 U.S.C. 1865. The only other requirements are that jurors may not be charged with or convicted of a felony or incapable of serving because of mental or physical infirmities.

[90] *Id.* The same bills, H.R. 14765 and S. 3296, 89th Cong. 2d Sess. (1968) which proposed the reforms that eventually led to the Federal Jury Selection and Service Act, also included a proposal for Federal remedies against discrimination in State jury selection. The proposal would have outlawed exclusion of any person from serving on grand or petit juries in any State court on account of his race, color, religion, sex, national origin, or economic status. The proposal would not have changed State jury selection methods, but would have provided more effective Federal remedies against discrimination resulting from these methods. The proposal would have authorized suits by the Attorney General to secure the rights of persons unlawfully excluded from State court juries. It also provided for discovery and recordkeeping procedures to facilitate the conduct of lawsuits both by the Attorney General and by private persons challenging State jury composition. Upon a finding of discrimination, the court would have been empowered to suspend the use of subjective tests for jurors which vested undue discretion in jury officials. An amended version of H.R. 14765 was passed by the House but it was never voted on by the Senate. S. 1026, a similar bill, introduced in 1967, 90th Cong., 1st Sess., which would have strengthened the recordkeeping requirement by proposing that records be kept by race was not reported out by the Senate Judiciary Committee. Currently, a similar proposal has been introduced by Senator Philip A. Hart and a large bipartisan group of sponsors, S. 2029, 91st Cong. 1st Sess. (1969).

[91] Interview with Paul Phillips, Feb. 6, 1968.

[92] San Antonio Hearing at 666. Interview with Mike Gonsalez, December 1968.

[93] Interviews with John Burciaga, Feb. 27, 1968; with Jess Cuellar, Feb. 27, 1968.

[94] San Antonio Hearing at 696–98.

[95] *Id.* at 700.

had not been negligent. After the trial, Archer said, one of the jurors told him that they were not anxious to award money damages to a Mexican American, particularly where a local Anglo was involved.[96]

James De Anda, a Corpus Christi lawyer, told a Cabinet Committee convened in October 1968 at El Paso, Texas, to discuss Mexican American problems that insurance companies are reluctant to insure minority group persons. De Anda stated that in his view this reluctance is based on the company's belief that a member of a minority group has two strikes against him: first, law enforcement prejudice resulting in unfavorable police testimony and second, juror and judicial prejudice. De Anda said that insurance company adjusters have told him during settlement negotiations that "an injured or dead Mexican isn't worth as much as an injured or dead Anglo."[97] Recently, one of De Anda's associates participated in a trial that resulted in a hung jury because one of the jurors stated that "no Mexican is worth ten thousand dollars".

Matt Garcia said that in Texas, a concept prevails of what a Mexican American should earn as wages or recover in damages which results in very low verdicts for Mexican American plaintiffs. He illustrated this with the story of a case he had tried:

> The facts, briefly, are that the plaintiff is a passenger in a truck that is stopped at a stop sign. A big piece of road equipment is coming down the main street, makes the turn on to the street where the truck is parked. One of these big draglines and shovels suspended from the front end of the road equipment swings over into the windshield of the truck that is properly stopped, knocks the passenger half way out. The shovel and dragline go back and then hits it again, and catches him between the door and the door jamb, and injures his back severely.

Garcia characterized the suit as "a clear-cut case, one of these that most plaintiff's lawyers dream about to provide them their retirement". The insurance company offered to settle the case for $20,000 but the plaintiff declined the settlement because there seemed to be no reason for him not to go to trial. The plaintiff was a Mexican American and the jury was all-Anglo. The first jury couldn't decide whether the dragline operator had been negligent. The case was tried again and the second jury gave him a verdict of $3,500. Mr. Garcia commented:

> I mean this is typical of these situations. You are not going to get what you are entitled to, because your life is worthless . . . in these small towns.[98]

Summary

Grand and petit juries in the Southwest are unrepresentative of the Mexican American population. Discriminatory factors, such as the wide discretion vested in officials empowered to select juries and use of the peremptory challenge to strike Mexican American jurors, play a large role in creating unrepresentative juries. Factors such as low-income or lack of knowledge of the English language do not explain the wide disparities between the Mexican American portion of the total population and their proportional representation on juries. Mexican Americans believe that juries from which they are excluded are often biased against them.

[96] Interview with Alva Archer, Sept. 12, 1968.
[97] Cabinet Committee Hearings, *supra* n. 32 at 218.
[98] San Antonio Hearing at 668. In the same vein, Garcia said that there is no chance of recovery in a workman's compensation case when "Jose Gonzales" has to present his case to a jury of all-Anglo employers. Interview with Matt Garcia, Dec. 3, 1968.

Chapter 6

Bail

Under long-standing concepts bail in criminal cases is designed to permit the release of an accused person from custody with the assurance that he will appear for trial.[1] The eighth amendment to the Constitution of the United States prohibits excessive bail and the Federal Rules of Criminal Procedure guarantee a person's right to bail in noncapital cases before conviction.[2] The constitutions of all five Southwestern States discussed in this report also guarantee the right to bail before conviction in noncapital cases,[3] in addition to prohibiting the imposition of excessive bail.[4]

Improper use of bail against Mexican Americans

Allegations were made that the bail system in the Southwestern States frequently was used more severely against Mexican Americans than others. Some persons alleged that discriminatorily high bail was set for Mexican American suspects; others alleged that excessive bail or denial of an opportunity to post bail was used by law enforcement officials to retain custody of accused Mexican Americans or to harass them rather than assure appearance at trial. In one area there were allegations that the misuse of bail by local authorities had created a situation resembling involuntary servitude or peonage.

A Mexican American school teacher in Los Angeles, arrested with 12 others on a felony charge of conspiracy to commit a misdemeanor in connection with a school walkout by Mexican American high school students, complained that the timing of the arrests late on a Friday night and the setting of excessive bail were designed to keep him and the other defendants in jail over the weekend. Bail was set at $1,200 each. Unable to raise bail in this amount, they had to wait until Monday morning for a hearing on a petition for reduction of bail. On Monday the court reduced the bail to $500 each. Subsequently this was lowered to $250 and eventually changed to release on their own recognizance.[5]

In Texas a number of complaints were heard regarding excessive bail and improper bail procedures used by law enforcement officials in Starr County during the United Farm Workers Organizing Committee (UFWOC) strike in 1966–67. In May 1967, the Texas State Advisory Committee to the United States Commission on Civil Rights held a meeting in Starr County to gather information about these allegations. Eugene Nelson, a staff organizer for the UFWOC told the Advisory Committee that he was arrested for allegedly threatening the life of a Texas Ranger; his bail was set at $2,000, the maximum fine for the offense. Later that day a well known and wealthy landowner from Starr County agreed to sign a property bond to secure his release. Local authorities, however, refused to accept the property bond even though it was well known that the signer was the owner of a great deal of property in the county. The authorities demanded copies of his tax records to prove that he had enough property to cover the bond.[6] As a result the organizer, who had been arrested on a Friday afternoon, remained in jail until Monday because the necessary tax certificate could not be obtained until then. On Monday he was released after the tax certificate listing all the property owned in Starr County by the signer of the bond was accepted.[7]

Other allegations concerning excessive bail were heard by the Committee. In one case the Texas Rangers arrested 11 picketers and

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[1] Questions involving proposals for "preventive" detention of defendants and the adequacy of procedural safeguards under such proposals are not considered here. For a brief discussion of the history and purpose of bail see Freed and Wald, *Bail in the United States: 1964*, A Report to the National Conference on Bail and Criminal Justice, Washington, D.C., May 27–29, 1964 at 1–8 [hereinafter cited as Freed and Wald]; *Stack v. Boyle*, 342 U.S. 1 (1951); see also U.S. Commission on Civil Rights, *Law Enforcement: A Report on Equal Protection in the South (1965)* at 68–75.

[2] Fed. R. Crim. P. 46(a).

[3] Ariz. Const. art. 2, § 22; Calif. Const. art. I, § 6; Colo. Const. art. II, § 19; N. Mex. Const. art. II, § 13; Tex. Const. art. I, § 11.

[4] Ariz. Const. art. 2, § 15; Calif. Const. art. I, § 6; Colo. Const., art. II, § 20; N. Mex. Const. art. II, § 13; Tex. Const. art. I, § 13.

[5] Interview with Sal Castro, July 11, 1968.

[6] *Proceedings Before the Texas State Advisory Committee to the U.S. Commission on Civil Rights in Starr County, Texas, May 25–26, 1967*, at 104 [hereinafter cited as Starr County T.].

[7] *Id.* at 182–83.

charged them with secondary picketing (the constitutionality of the Texas law against secondary picketing is currently being challenged in the United States District Court in Brownsville, Texas). Even though the maximum fine for violation of this law was only $500, the amount of bail was set at $1,000 apiece.[8] Later, in its report on the situation in Starr County, the Advisory Committee concluded that members of the UFWOC and others active in the organizing campaign were denied their legal rights. Among the denials of legal rights cited by the Committee was the "holding of union organizers for many hours before they were released on bond."[9]

In December 1968, at the Commission's hearing in San Antonio, a Mexican American attorney from Starr County testified that in his opinion the amount of bail required in most cases during the labor dispute was excessive and in many cases was "way beyond what the final fine . . . or penalty would be."[10] He also complained that the local authorities had made it extremely difficult to bail anyone out of jail by imposing unnecessary requirements in addition to the large amounts set for bail. As a result, he said, in some cases it took 7 to 10 days to get people released from jail.[11]

Similar complaints regarding delay or inability to obtain release on bail were received in Denver. Here, several attorneys, including the director of the public defender's office, complained that Mexican Americans who were arrested without a warrant were often being held in jail from 2 to 5 days while the district attorney's office determined whether or not to file an information against them.[12] During this period they were questioned and an investigation was conducted, but they were not eligible for release on bail. In some cases the district attorney's office would decide to release the person rather than file an information charging him with an offense.

In Albuquerque, New Mexico, a young Mexican American who had recently returned from the National Institute of Mental Health Research Center (Narcotics Treatment Center) in Forth Worth, Texas said that he was frequently picked up by the police for "investigation" and held for 24 hours. During this time he was not eligible for release on bail. He stated, however, that he was usually released without charge and he claimed that it was fairly common practice in Albuquerque.[13] A Federal probation officer with the United States District Court in Albuquerque told the New Mexico State Advisory Committee about an incident involving a Mexican American under his supervision. The Mexican American came to Albuquerque on an errand for his employer, and visited a friend whose home was under surveillance by local law enforcement officers on the lookout for possible narcotics violators. When he left his friend's house, he was stopped by the police. The probation officer gave the following account of what occurred:

> [H]e was taken out of his car, the wrecker was called, and his car was towed in and he was booked for vagrancy. He had $90 in his pocket; he had two check stubs showing that he was working . . . and he had a note saying he was authorized to pick up the pay checks and deliver them . . . to the . . . work site.[14]

Even though it was obvious that he had a job and had cash in his pockets:

> He was booked for vagrancy and the bond on his vagrancy was $10. He had $90 in his possession and they would not permit him to post bond on the vagrancy charge. He was told that he had to see certain officers who were not on duty at the time but who would come in in the morning after which they would decide whether or not he could post bond. . . . Eventually the officers did arrive and after several hours of interrogation . . . they did permit him to post the $10 bond.[15]

In some parts of the Southwest, complaints were made that law enforcement officials did not make it clear to Mexican American defendants that their initial judicial appearance was not the

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[8] *Id.* at 102.
[9] *Starr County Report* at 2.
[10] San Antonio Hearing at 452.
[11] *Id.* at 452–53.
[12] Interviews with Marshall Quiat, Oct. 18, 1967; Don MacDonald, Nov. 14, 1967; Frank Plaut, Nov. 15, 1967; Edward Sherman, Nov. 21, 1967.
[13] Staff interview.
[14] Albuquerque T. at 143.
[15] *Id.*

trial and that they had not been found guilty of a crime. As a result, many defendants did not show up for trial and forfeited their bail, thus establishing a criminal record and leaving themselves liable to arrest at some future date for failure to appear at trial.

Henry Trujillo, an investigator for the Alamosa County District Attorney's Office in the San Luis Valley, a poor rural area of southern Colorado, told a Commission staff member that Mexican American defendants are encouraged not to appear for trial and to forfeit their bail. They are told by the local officials that it would be too much trouble and expense to appear.[16]

The police magistrate in Monte Vista, Colorado in Alamosa County, said that in his community many defendants forfeit their bail, but he could not explain why.[17] The bail procedure was similarly criticized in Fort Lupton, in northern Colorado, the scene of a number of complaints about the treatment of migrant laborers by the local police and courts in the summer of 1966. There the local magistrate reportedly set bail at $75 for migrant workers charged with public drunkenness who were in town to pick sugar beets and scheduled trial for 2 months later, long after the migrant workers would have left the community.[18]

Mr. Trujillo disclosed another and more serious problem resembling involuntary servitude or peonage.[19] He stated that during the harvest season local farmers would go to the jails in the towns of Center and Monte Vista, Colorado on Monday mornings and inquire about the number of Mexican American laborers arrested over the weekend. The farmers would select the best workers and pay their fines for them. Upon their release the men would have to repay the farmer by working for him. According to Trujillo, in Monte Vista the men were told by the police magistrate that if they did not remain on the farm and work off the amount owed to the farmer, they would be returned to jail. In addition, he said, the police magistrate would sometimes give the farmer a "discount." If the fine was set at $40, he would only require the farmer to pay $25. The magistrate, however, would tell the worker that the fine paid by the farmer was $40 and that he owed the farmer $40 worth of work. According to Mr. Trujillo, once the worker was released from jail, he usually was at the mercy of the farmer and often was ill-treated while on the farm.[20] The chief of police and a patrolman in Center, and the police magistrate in Monte Vista confirmed the fact that workers are bailed out of jail or have their fines paid by local farmers and are obligated to work off the ensuing debt.[21]

The high cost of bail

In the Southwest, Mexican Americans, who as an ethnic group have an average income appreciably below that of the total population in the region, (see Introduction to this report) frequently cannot afford to pay even modest bail and must remain in jail until trial. The cost of such a system, both to society and to the accused and his family, is enormous.[22] Some of these practices in the Federal courts have been modified by the Bail Reform Act of 1966 (*infra* note 29.)

In both Phoenix and Tucson, Arizona, a number of people complained that Mexican American defendants were often forced to remain in jail until trial because they could afford neither the amount of money required for bail nor a bondsman's fee.[23] An attorney in Phoenix

[16] Interview with Henry Trujillo, Dec. 13, 1967.

[17] Interview with Samuel Wills, Dec. 12, 1967.

[18] Interviews with Jesse Sauceda, Oct. 16, 1967, and James Carrigan, Nov. 13, 1967; Colorado Commission on Spanish-Surnamed Citizens, *The Status of Spanish-Surnamed Citizens in Colorado* (1967) at 93.

[19] Federal law provides:

§ 1581. Peonage . . .

(a) Whoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage, shall be fined not more than $5,000 or imprisoned not more than five years, or both. 18 U.S.C. § 1581(a).

§ 1584. Sale into involuntary servitude

Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, shall be fined not more than $5,000 or imprisoned not more than five years, or both. 18 U.S.C. § 1584.

[20] Interview with Henry Trujillo, Dec. 13, 1967.

[21] Interview with Samuel Wills, Dec. 12, 1967; interview with Jerry Thomas, chief, and Richard Walker, patrolman, Dec. 14, 1967.

[22] Studies dissecting the bail system have been conducted for a good many years. Their uniform conclusion is that the system has not worked very well. Accused persons in large numbers in all parts of the country are forced to spend the interval between arrest and trial in jail. Most are detained only because they cannot pay the bondsman's premium, or put up the collateral he asks. They lose their jobs and their family life is disrupted. Their chances for acquittal are lowered; their opportunities for probation diminished; their quest for equal justice handicapped. Freed and Wald, *supra* n. 1 at 110.

[23] Interviews with Jess Cuellar, Phoenix, Ariz., Feb. 27–28, 1968; Armando DeLeon, Phoenix, Ariz., Mar. 1, 1968; Delane Carpenter, Tucson, Ariz., Mar. 4, 1968; Edward Morgan, Tucson, Ariz., Mar. 4, 1968; Manuel Garcia, Tucson, Ariz., Mar. 5, 1968.

said that many Mexican Americans are, in effect, punished in advance of their trial because they are unable to raise enough money for bail.[24] A city councilman in Tucson complained that all attempts to lower bail bond requirements had met stiff resistance from bail bondsmen because this would lower their income.[25]

The director of an Office of Economic Opportunity (OEO) funded job placement program in East Los Angeles also said that Mexican American youths often remain in jail because of lack of funds for bail. He asserted: "You can't get help; there's no money to get help; you have a feeling of hopelessness".[26] In New Mexico, Commission staff members talked to a number of Mexican Americans who were arrested on major and minor charges and had to remain in jail because they could not afford bail.[27] In a 1967 report to the Colorado General Assembly, the Colorado Commission on Spanish-Surnamed Citizens commented about the cost of bail bonds:

> The bail system clearly discriminates and punishes the poor. The affluent can easily put up their bail and buy their freedom; the poor often do not have the price of the bail bond. The average amount of bail is about $500, and the average premium for a bail bond is $25 to $50 which is 5 percent or 10 percent of the amount of the bond. Many of the Spanish-surnamed poor cannot raise this sum and must remain in jail. By remaining in jail he loses his earnings and often his job. His family suffers and may be actually pushed onto welfare. All of this happens before the man is tried.[28]

Alternatives to cash bail

Some alternatives to the traditional cash bail system have been tried in various jurisdictions in the Southwest. These programs hold a great deal of promise, but there have been some criticisms of their operation.

One such alternative is the release of a defendant on his own recognizance.[29] Under this procedure the defendant is released after he has promised to return for trial; no cash bail is required. This method has been used in the past by courts to facilitate the pretrial release of certain citizens known to be reliable or prominent in the community. Now many communities have extended this system to defendants who cannot afford bail, but after a brief investigation are considered to be good risks to return for trial.

In Los Angeles and Phoenix, defendants may be released on their own recognizance. A superior court probation officer and an attorney in Phoenix, however, said that Mexican Americans residing in Phoenix are not able to obtain release from custody on their own recognizance as easily as Anglos.[30] The attorney recalled a recent example in which he had encountered a great deal of difficulty in getting a Mexican American agricultural worker, a resident of South Phoenix, released on his own recognizance although he could always obtain such releases for Anglos in similar situations.[31] In Los Angeles, similar allegations were made.[32]

In Artesia, New Mexico, a Mexican American whose family had resided in the area for 40 years and who had a wife and children as well as a job, told a Commission staff member that the local justice of the peace had refused to release him on his own recognizance when he was arrested for drunken and reckless driving. He obtained such a release only after a Commission attorney talked to the justice of the peace about the case.[33]

In Denver, Under Sheriff Mose Trujillo said that prior to the establishment of a personal recognizance system in the city and county courts many people could not afford a minimum bondsman's fee to be released before trial. In his opinion, this new system had worked well and only 5 percent of the defendants released on their

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[24] Interview with Armando DeLeon, *Id.*

[25] Interview with Hector Morales, Mar. 6, 1968.

[26] Interview with Rudy Salinas, July 15, 1968.

[27] Interviews with Abel Ortiz, Feb. 26, 1968; Roldon Garcia, Feb. 27–28, 1968; Johnnie Baca, Apr. 4, 1968; Frederico Deporda, Apr. 11, 1968.

[28] Colorado Commission on Spanish-Surnamed Citizens, *The Status of Spanish-Surnamed Citizens in Colorado* (1967) at 94 (footnote omitted).

[29] In 1966, as a result of growing criticism of the traditional bail system, the Federal Bail Reform Act was enacted by Congress, 18 U.S.C. §3146 (1966). The purpose of the act which governs bail procedures only in Federal courts, was "to revise the practices relating to bail to assure that all persons, regardless of their financial status, shall not needlessly be detained pending their appearance to answer charges, . . . when detention serves neither the ends of justice nor the public interest." Pub. L. No. 89–465, § 2, 80 Stat. 214 (1966). Under the terms of the act every person charged with a noncapital offense in a Federal court must be released on his personal recognizance or upon the execution of an unsecured appearance bond, unless the judicial officer determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the accused as required. 18 U.S.C. § 3146(a) (1966). The standards for release pending appeal after conviction are more stringent.

[30] Interview with Jess Cuellar, Feb. 27 & 28, 1968, and Gerald Pollock, Feb. 28, 1968.

[31] Interview with Pollock, *Id.*

[32] Interview with Rudy Salinas, July 15, 1968.

[33] Interview with Manuel Hernandez, Feb. 26, 1968.

own recognizance had failed to appear for trial. He expressed the view, however, that standards applied to each defendant seeking release on his own recognizance were too rigid.[34]

Summary

Although the primary purpose of bail in criminal cases is to provide for the release of an accused person from custody with the assurance that he will appear for trial, the system of bail in the Southwest frequently is used more severely against Mexican Americans than against Anglos as a form of discrimination. In certain cases, Mexican American defendants are faced with excessively high bail. Defendants in other cases are held without any opportunity to put up bail or are purposely confused by local officials about the bail hearing so that they unknowingly forfeit their bail. In one area local farmers put up bail or pay fines for migrant workers and make them work off the amount in a situation resembling peonage or involuntary servitude.

Even in the absence of such abuses, the high cost of bail under the traditional bail system prevents many Mexican Americans from being released prior to their trial, while others accused of similar crimes go free merely because they can afford to pay a bail bondsman to put up their bail. In some jurisdictions, alternatives to the traditional cash bail systems are being tried including the release of defendants on their own recognizance.

[34] Interview with Mose Trujillo, Nov. 13, 1967. Edward Sherman, director of the Denver Public Defender's Office agreed. Interview with Edward Sherman, Nov. 21, 1967.

Chapter 7

Representation by Counsel

Gaps in representation for indigents

In 1959 one-half of the Spanish surname families in the rural areas of the Southwest and one-third of those in the urban areas had incomes of less than $3,000. Consequently, a sizable proportion of Mexican Americans are unable to afford private counsel in either civil or criminal matters.[1]

The Supreme Court has held that defendants in felony cases in Federal and State courts who lack means to obtain private counsel have a constitutionally guaranteed right to have counsel appointed on their behalf.[2] The Court has not decided whether this right extends to indigent defendants being tried on less serious charges.[3]

California, by legislation as well as judicial decision, has extended the right to counsel to an indigent accused of a misdemeanor.[4] Arizona guarantees the right to counsel for indigents charged with high misdemeanors.[5] None of the other Southwestern States provides the assistance of counsel for indigents in other than felony prosecutions.[6] Indigent litigants in civil suits generally do not have the right to have counsel appointed for them even though the consequences of civil litigation can be disruptive and serious.[7]

Criminal cases

Effects of lack of counsel—The majority of defendants in criminal cases are tried on misdemeanor charges carrying a maximum sentence of less than 1 year. As was noted, California is the only State among the five discussed in this report that has extended the right to appointed counsel to all misdemeanor cases.

The former director of community action services at the University of New Mexico conducted a study to determine the effect of representation by counsel on the outcome of misdemeanor cases in the Albuquerque municipal court. According to his statistics there were 17,828 misdemeanor charges brought before the municipal court in 1967. In 1,841 of these cases (approximately 10 percent), the defendants were represented by counsel. Only 15 percent of the defendants represented by counsel but 45 percent of the defendants without counsel were found guilty.[8]

In Phoenix and Tucson, Arizona, attorneys and others involved in the administration of justice—including a public prosecutor—agreed that counsel should be available for all defend-

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[1] See Introduction, p. x.

[2] *Johnson v. Zerbst,* 304 U.S. 458 (1938) (Federal prosecution); *Gideon v. Wainwright,* 372 U.S. 335 (1963) (State prosecution).

[3] There has been a difference of opinion among various State courts interpreting *Gideon* whether an accused is entitled as a matter of right to State-appointed counsel in misdemeanor cases. Some courts have decided that all misdemeanor defendants have a right to state appointed counsel, *Minnesota* v. *Borst,* 278 Min. 388, 154 NW 2d 888 (1967); some courts have decided that only defendants charged with serious misdemeanors have a right to State-appointed counsel, *State ex rel. Plutshack* v. *State Department of Health and Social Service,* 37 Wisc. 2d 713, 155 NW 2d 549 (1968); and some courts have decided that no one charged with a misdemeanor has an absolute right to State-appointed counsel, *State* v. *Sherron,* 268 NC 694, 151 SE 2d 599 (1966).

[4] *In re Johnson,* 42 Cal. Rptr. 228, 398 P. 2d 420 (1965); Cal. Govt. C. §§ 27705.1 and 27706 (West 1968); Cal. Pen. C. § 987 (West 1956).

[5] *Leonard* v. *Eyman,* 1 Ariz. App. 593, 405 P. 2d 903 (1965).

[6] Some courts throughout the United States have interpreted the *Gideon* case to require appointment of counsel for indigents in all criminal cases, misdemeanor as well as felonies. See n. 3 *supra.* Most courts ruling on this issue have refrained from extending *Gideon* to misdemeanors. Generally, misdemeanors carry a maximum sentence of less than 1 year.

[7] "[C]ertain nominally civil causes can result in a severe deprivation of liberty. More importantly, civil cases undoubtedly arise in which a deprivation of 'property' causes consequences as grave as a loss of liberty. The struggling employee, for example, may well find a wage attachment or confiscation of his tools as onerous in securing employment as a criminal conviction. Moreover, the citizen who permanently loses his home, a government job, a required license, or unemployment benefits may, in many circumstances, receive a more crippling blow than the criminal who serves a jail sentence. If vindication is prevented by financial inability to secure counsel, and counsel is not provided, the resulting harm is indistinguishable from that suffered by the criminal defendant." *Note, The Right to Counsel in Civil Litigation,* 66 Colum. L. Rev. 1322, 1332 (1966).

[8] Albuquerque T. at 203–08. These figures do not include the cases that were dismissed.

ants charged with misdemeanors.[9] Examples of injustices resulting from lack of counsel appeared during the field investigations. A Mexican American woman from Silver City, New Mexico, stated that her husband, who was convicted of resisting arrest and assaulting an officer, lost his right to appeal the conviction because he did not have an attorney, and did not know that a notice of appeal had to be filed within 10 days of the trial. She said that the trial judge, whom she called about appealing the decision, did not advise her of the 10 day limitation.[10]

A Mexican American in Carlsbad, New Mexico stated that he was arrested on a charge of being drunk and disorderly, which he believed was an act of harassment against him by the police. At his trial, he said, the justice of the peace told him that if he pleaded not guilty he would have to get a lawyer and take the case to a higher court, but if he pleaded guilty he would receive a $40 fine or 5 days in jail. Although he was innocent, he said, he could not afford a lawyer so he pleaded guilty.[11]

Quality of legal representation where provided for indigents accused of crime—To provide counsel for indigent defendants charged with felonies (or, in California, any crimes) arrangements have been made in all jurisdictions to provide the defendant either with an attorney appointed by the court from the local bar or with the services of a public defender.

In a number of communities visited there were many complaints about the quality of counsel appointed by the courts to represent indigent criminal defendants, a large proportion of whom were Mexican Americans. A city councilman in Tucson, Arizona commented that the attorneys appointed by the court were usually inexperienced in criminal work.[12] In San Antonio, Texas an attorney employed by the Bexar County Legal Aid Association, which did not handle criminal cases, said that many Mexican American defendants were unable to hire their own attorneys and were dependent on court-appointed counsel who often gave inadequate services.[13] Albert Pena, an attorney and a Bexar County Commissioner, said that court appointed attorneys frequently told Mexican American defendants to plead guilty because if found guilty after trial they would not be granted probation. In his opinion this was done merely to expedite cases and he felt that the attorneys were treating their clients too casually.[14]

Similar opinions were voiced in Albuquerque, New Mexico. An attorney with the New Mexico Department of Welfare stated that while in many criminal cases indigent defendants received adequate counsel, some court-appointed attorneys, through resentment at their assignment or lack of experience, failed to provide adequate representation.[15] A resident of Silver City, New Mexico said he did not think that any effort was made in his community to provide adequate counsel for indigent criminal defendants. He stated that when a man he knew went to see his court-appointed attorney, "the legal

[9] Interviews in Phoenix with Robert J. Corcoran, Feb. 27, 1968; Benjamin Salt, Feb. 27, 1968; Ben Marshall, Feb. 28, 1968; Gerald A. Pollock, Feb. 28, 1968; Joseph Robles, Feb. 29, 1968; in Tucson with W. Edward Morgan, Mar. 4, 1968; Manuel H. Garcia, Mar. 5, 1968; Judge John G. Marks, Mar. 7, 1968. In 1932, the United States Supreme Court stressed the need for counsel in criminal cases:

> The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with a crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge to adequately prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. *Powell v. Alabama,* 287 U.S. 45, 68–9 (1932).

[10] Roswell T. at 18–28.

[11] Interview with Frederico Deporda, Apr. 11, 1968.

[12] Interview with Hector Morales, Mar. 6, 1968.

[13] Interview with Andres Hernandez, Apr. 9, 1968.

[14] Interview with the Honorable Albert A. Pena, Jr., Apr. 10, 1968.

[15] Interview with Frank R. Martinez, Apr. 24, 1968.

counsel told him it would be better for him to plead guilty and leave himself to the mercy of the court and that would be that, no muss, no fuss, no bother." [16]

In one area, it was alleged that Mexican Americans received poorer representation from court-appointed counsel than indigent Anglos. Boston Witt, formerly attorney general of New Mexico, expressed the opinion that in the eastern part of the State, frequently referred to by Mexican Americans as "Little Texas", a "poor Mexican" does not get legal assistance as good as that received by a "poor Gringo." [Anglo] [17]

A Mexican American attorney practicing in the San Luis Valley in southern Colorado stated that private counsel was retained in less than 10 percent of the felony criminal cases in his area. The other cases required the services of a court-appointed attorney. Thus, the demands of court-appointed work on local attorneys had been very great and in his opinion had resulted in inadequate legal representation in certain cases.[18]

Some cities and counties in the Southwest provide indigent defendants in felony cases—and, in California, in misdemeanor cases as well—with the services of a public defender rather than court-appointed attorneys. Criticism was voiced during the field investigations of some of the public defender programs in the Southwest.

A superior court probation officer in Phoenix, Arizona complained that the public defender's office in that city was overloaded with cases. As a result, the attorneys tended to encourage their clients, many of whom were Mexican Americans, to plead guilty, hoping in turn that they would only receive probation or a suspended sentence.[19] Don MacDonald, director of the assigned counsel program at the University of Colorado Law School, said that many indigent Mexican American defendants in Denver were reluctant to use the services of attorneys from the public defender's office.[20] He attributed this reluctance to the prevalence of plea bargaining practiced by the office, and the resulting feeling of indigent defendants that the public defender's office did not care about their case.

MacDonald also was critical of the quality of the appellate work done by the public defender's office. Edward Sherman, director of the public defender's office in Denver, stated at the time of the interview that each attorney in his office was handling an average of 300 to 350 cases a year.[21] In addition, his office was involved in as many as 45 cases per year that were appealed to the Colorado Supreme Court. These appellate cases demanded much more of an attorney's time than trial work, he explained. Thus, he said, each of the attorneys on his staff was overloaded with work.[22]

The public defender for Los Angeles County also stated that his staff was overworked and he needed more attorneys to do a proper job.[23] One attorney interviewed in Los Angeles stated that the attorneys in the public defender's office are so overworked that they do not care about individual clients. He said:

> [T]he district attorney, the public defenders, the courts, the judges, all become friends: the system operates and it's easy to rationalize: "Here comes another Mexican who is probably guilty anyway. Let's make a deal and get rid of him." [24]

Civil cases

While most of the urban areas in the Southwest which Commission staff visited had legal

[16] Roswell T. at 17.

[17] Interview with Boston A. Witt, Mar. 1, 1968.

[18] Interview with Carlos Lucero, Dec. 11, 1967.

[19] Interview with Jess Cuellar, Feb. 27 and 28, 1968. In 1964 the Arizona Legislature enacted legislation allowing counties of 100,000 persons or more to establish the office of public defender to represent indigent defendants in felony cases. Ariz. Rev'd. Stats. §§ 11–581—11–586 (1964).

[20] Interview with Don MacDonald, Nov. 14, 1967. The Colorado Legislature enacted legislation allowing any city or county to establish the office of public defender to represent indigent felony defendants; the defender within his discretion may also represent indigents charged with misdemeanors in district or county court, Colo. Revd. Stats. §§ 39–21–1—10 (1963).

[21] Edward Sherman, director of the public defender's office in Denver, stated that if a defendant asserts his innocence, the attorneys in his office will not plead him guilty to any charge. If the attorney thinks the defendant is guilty and has no defense the attorney will ask him if he wants the attorney to work out a deal for him with the district attorney's office. But the attorney will not try to work out a deal, Sherman said, unless he thinks it is necessary and the defendant is willing. Telephone interview with Edward Sherman, Nov. 21, 1967.

[22] Telephone interview with Edward Sherman, *Id.*

[23] Los Angeles T. at 194–215. In 1947 the California Legislature first enacted and later amended legislation allowing any county to establish the office of the public defender to represent indigent defendants in the superior, municipal, and justice courts (felonies and misdemeanors). Calif. Govt. Code §§ 27700–27711 (West 1968). Neither New Mexico nor Texas have legislation authorizing the establishment of a public defender's office.

[24] Interview with Frank Munoz, July 15, 1968.

aid programs to assist indigents in civil matters, many of the small communities and rural areas did not.[25] There are currently more than 80 OEO legal services programs with 140 offices throughout the Southwest.[26] The bulk of these programs and offices are in California. In Colorado there are no programs in the southern part of the State, which is populated mainly by Mexican Americans. In New Mexico, except for Indian legal services programs, only Bernalillo and Sandoval Counties have such programs. In Texas only five of the 38 counties with more than 35 percent Mexican American populations have legal services programs. In Arizona, apart from Indian legal services programs primarily serving the reservations, five of the 14 counties including Maricopa (Phoenix) and Pima (Tucson) have legal services programs.

The Office of Economic Opportunity, through the local Community Action Program (CAP), is empowered to set up a legal services program to provide indigents with legal advice and representation in civil matters.[27] The CAP Director must make arrangements so that the State and local bar associations are consulted and given an opportunity to submit comments and recommendations on the project before it is approved or funded.[28] An OEO memorandum issued in 1967, explained that the intent of the statutory enactment was to "insure coordination" with state and local bar associations.[29] The memorandum also advocated the encouragement of the "highest level of cooperation" with local bar associations, which must play an "integral" role in the legal services program. Generally, where there has been strong opposition from these groups, OEO has not approved such a program.

Once a legal services program has been set up, the Federal contribution to the cost cannot exceed 80 percent of the total (except under special circumstances) and the remaining 20 percent must come from local non-Federal sources.[30] The local contribution can be in the form of services as well as cash.[31] Local lawyers often donate their time free to legal services programs and it is recorded as a contribution to the total cost of the program.

In some communities strong opposition was aroused from the local bar and other community leaders by the establishment of neighborhood legal services programs. Ray Phelps, an attorney from Roswell, New Mexico, stated that the local bar association in his area had formed its own legal aid program to help indigent civil litigants and to forestall the Office of Economic Opportunity from providing funds for the establishment of a legal services office in the area. Mr. Phelps said that the local bar association fought an OEO program because "the bar association here is very conservative and they don't believe in using Federal funds. This is socialistic. . . . They would rather not have the funds in the community if they came from the Federal Government." [32] He was critical of the local program and thought that local attorneys would not show great concern toward nonpaying clients.[33]

An assistant in the Colorado Governor's office responsible for coordinating all Colorado OEO programs told Commission staff members that many communities in Colorado, particularly in the San Luis Valley, have fought the establishment of OEO programs. The people holding power in these towns, he said, do not want these Federal programs.[34]

In Albuquerque, New Mexico, where the Legal Aid Society now receives funds from OEO, a portion of the local contribution is in the form of the donation of free time to the program by local attorneys. In 1967, however, the program was having difficulty in obtaining the necessary amount of local funding and donated services. When the program first accepted OEO funds, strong opposition came from the local bar association. According to the Director, the opposition, although diminished in strength, still continues. Other local groups responsible for providing funds had refused to increase their contribution to the program so that OEO, in turn, could not increase Federal funding. Because the Legal Aid Society went to the New Mexico Supreme Court contesting the constitutionality of the

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[25] See also, *Senate Subcomm. on Migratory Labor, 1969 Report, The Migratory Farm Labor Problem in the United States,* Report No. 967, 91st Cong., 1st Sess. 47–50 (1969).
[26] See discussion, *infra,* p. 58.
[27] 42 U.S.C. § 2809(a)(3) (1967).
[28] *Id.*
[29] Community Action Memo 62, Apr. 21, 1967.
[30] 42 U.S.C. § 2812(c) (1967).
[31] *Id.*
[32] Roswell T. at 68.
[33] *Id.* at 67.
[34] Interview with Samuel R. Martinez, Oct. 18, 1968.

State garnishment law, there was a great deal of pressure put on the Albuquerque United Giver's Fund by unhappy creditors to reduce its support for the Society. At one point the entire program was endangered when UGF withheld portions of the local funding.[35]

Other factors inhibiting access of Mexican Americans to adequate legal assistance

Inadequate access to counsel in some Mexican American communities is not a result of indigency alone.

In some sections of the Southwest where Mexican Americans are concentrated, there are few lawyers engaged in private practice of either civil or criminal law. The director of the Sandoval County (north of Albuquerque) Legal Services Program—and the only attorney employed by the program—told the New Mexico State Advisory Committee to the U.S. Commission on Civil Rights that there were no other attorneys practicing law in the county, which has a population of 15,000. The legal services program was set up solely to handle civil matters, not criminal cases. Thus, there were no lawyers in the county available to represent defendants in criminal cases. Defendants charged with a felony were tried in Albuquerque. Defendants charged with a misdemeanor were tried by a justice of the peace without the assistance of counsel. In the opinion of the legal services lawyer this resulted in injustices in many cases.[36]

In other areas where there were attorneys available, many of them were reluctant to accept Mexican Americans as clients. The executive secretary of the Community Service Center in Portales, New Mexico said that her organization had not been successful in obtaining local lawyers to represent Mexican Americans in criminal or traffic cases. In one instance, it was only after contacting the American Civil Liberties Union in Albuquerque that the Center was able to obtain a lawyer to represent a Mexican American defendant.[37] An official with the Community Action Program in Roswell, New Mexico, near Portales, said that it was very difficult for Mexican Americans in the Roswell area to retain an attorney for anything but noncontroversial lawsuits.[38]

The city attorney for a small town in southern Colorado said that the few attorneys available to represent indigent defendants in criminal matters were overloaded with cases. Local lawyers were reluctant to handle civil suits for Mexican Americans. She stated that most of the local attorneys believed that there was not enough money to be made in such cases considering the amount of time they required. She added: "They can't do it for nothing." [39]

A number of persons interviewed felt that more Mexican American attorneys were needed to provide better legal assistance to Mexican American clients who lacked fluency in the English language. Mexican American lawyers represent about 2 percent of all the attorneys in the five States, even though Mexican Americans constitute almost 12 percent of the total population.[40] On a State by State basis approximately 6 percent of the attorneys in New Mexico have Spanish surnames; in California and Texas the figure is approximately 1.5 percent, and in Arizona and Colorado it is less than 1 percent.[41]

Most of the 650 Mexican American attorneys in the Southwest practice in the larger cities, but Mexican Americans are underrepresented in the legal profession even in these urban areas. In Albuquerque, New Mexico, for example, where Mexican Americans constitute almost one-third of the city's population, only 25 Mexican American attorneys were practicing there out of a total of more than 475. San Antonio, Texas, where over 41 percent of the population was Mexican American, had more than 975 practicing lawyers in 1963. But in 1967 the Mexican American Legal Defense and Educational Fund estimated that only 55 of San Antonio's lawyers were Mexican Americans. In El Paso, where almost 50 percent of the population was Mexican American in 1960, the Fund estimated that there were 20 Mexican American lawyers out of a total of

[35] Interview with William Fitzpatrick, Feb. 8, 1968.
[36] Albuquerque T. at 224–26.
[37] Roswell T. at 77–79.
[38] Interview with Gilbert Garcia and Albert Sawyer, Feb. 11, 1968.
[39] Interview with Mrs. Elizabeth Conour, Del Norte, Colo., Dec. 11, 1967.
[40] See Introduction, p. x.
[41] Based on information obtained from the Mexican-American Legal Defense and Educational Fund, Inc., San Antonio, Texas. See also, U.S. Commission on Civil Rights, *Civil Rights Digest,* Vol. 1, No. 2 (Summer 1968), "More Minority Lawyers Needed," at 17–18.

over 210. In Pueblo, Colorado, approximately five of the 90 lawyers were Mexican Americans.

In rural areas where there are significant numbers of Mexican Americans there are few, if any, Mexican American attorneys. The district attorney for the fifth judicial district (encompassing Chaves, Eddy and Lea Counties) in southeastern New Mexico reported that there were no Mexican American attorneys in private practice in the three major cities (Roswell, Carlsbad, and Hobbs) in his district although the counties in which these are located had substantial Mexican American populations.[42] A group of Mexican Americans in Artesia, New Mexico said that while they were suspicious of attorneys in general, they preferred to deal with Mexican American lawyers. Since there were no Mexican American lawyers in the surrounding area, it was necessary for them to go to Albuquerque, a distance of over 200 miles,[43] in the rural San Luis Valley in Colorado, which is predominantly Mexican American, there was only one Mexican American attorney.[44]

There are several reasons for the small number of Mexican American attorneys. Few Mexican Americans are studying law. The cost of a legal education has prevented many Mexican Americans from pursuing a legal career. In addition, language difficulties have resulted in large numbers of dropouts among Mexican Americans at various levels of the educational process and have made admission to law school, where there is a premium on verbal and written English-language skills, particularly difficult for Mexican Americans.

The Mexican-American Legal Defense and Educational Fund, established in 1968 under a $2.2 million Ford Foundation grant, has allocated $250,000 of the grant for 50 3-year scholarships to enable Mexican Americans to attend law school. In addition, in 1968 the Ford Foundation and the Office of Economic Opportunity began funding the Council on Legal Education Opportunity (CLEO) program to help members of various minority groups, including Mexican Americans, pursue a legal education. The OEO funds are used to operate law school regional training institutes during the summer to help minority students gain entrance to law schools and to prepare them for the law school program. The students who successfully complete one of the summer institutes and enter law school are provided with a $1,500 per year scholarship by the Ford Foundation, in addition to scholarship aid from the law school. As a result of the 1968 summer program, 93 students are now attending 33 accredited law schools.[45] In the summer of 1969 more than 40 law schools joined in helping prepare about 450 minority group students, including approximately 50 Mexican Americans, for law school the following fall.[46]

Summary

Many Mexican Americans in the Southwest cannot afford private counsel in either civil or criminal matters. In misdemeanor cases court-appointed counsel is not available, except in California, and as a result Mexican Americans appearing in lower level courts are subject to injustices. Even in felony cases, where court-appointed counsel is required, many complaints were heard about the poor quality of representation provided for Mexican American defendants. Assigned counsel are sometimes unconcerned or inexperienced, while public defenders are often overworked. In some parts of the Southwest where there are large concentrations of Mexican Americans there are no legal aid programs to assist indigents in civil matters.

In some areas of the Southwest, attorneys are reluctant to accept Mexican Americans as clients because their cases are controversial or are not sufficiently rewarding financially. There is a noticeable dearth of Mexican American lawyers engaged in private practice of either civil or criminal law although some programs are now underway to help young Mexican Americans enter law school.

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[42] Telephone interview with Pat Handgan, Mar. 24, 1969.

[43] Interview with group of Mexican Americans who wished to remain unidentified, South Artesia, N. Mex. Feb. 29, 1968.

[44] Interview with Carlos Lucero, Dec. 11, 1967.

[45] Telephone interview with Melvin Kennedy, executive director, Council on Legal Education Opportunity (CLEO), Atlanta, Ga., July 25, 1969.

[46] *Id.* The following law schools in the Southwest are currently involved in the CLEO program: University of Denver College of Law, Loyola University School of Law (Los Angeles), University of California at Los Angeles, the University of California Western, the University of Southern California, and the University of California at San Diego.

Chapter 8

Attitudes of Mexican Americans Toward the Courts

General attitudes—Many Mexican Americans expressed mistrust of the courts or complained that the courts were insensitive to their background and culture.

In Lariat, Colorado, teenage Mexican Americans who had been cited for traffic violations told Commission staff that when they go to police court, they "prepare for time." They buy plenty of cigarettes, they said, because they know they will be going to jail whether or not they are guilty. The young men said they saw no point in pleading not guilty even the first time "because they knew what would happen anyway." Only with a lawyer [which they could not afford] did the youths feel that they had a chance to escape conviction.[1]

Even in circumstances where a right to court-appointed counsel may exist, indigent Mexican Americans are often distrustful of the judicial process. An attorney in Fresno, California said that a poor Mexican American believes that to assert his right to court-appointed counsel, to an interpreter, or to a jury, will cost him money. He explained:

> . . . [t]he courtroom terminology and legal jargon is totally foreign to the Mexican American. They do not view what they are told by our system as being consistent with the protection of their rights and welfare. They don't view it that way; they see it only as part of the prosecution's case. You see, when they are told that they have a right to this and that, the chicanos think that they will fink out [if they exercise their rights]. It is a question of mistrust. . . . So, when they are talking about appointing someone it will cost me.[2]

Mrs. Kelly Smith, a Mexican American who worked in a Los Angeles neighborhood service organization, reported that a young Mexican immigrant who lived in Los Angeles and spoke only Spanish told her that he had been arrested for drunken driving after driving the wrong way on a one-way street and was very concerned about losing his driver's license. Although he had had some drinks, he claimed that he was not drunk. With some difficulty, Mrs. Smith said, she convinced him to plead not guilty. Later she learned that he had pleaded guilty because he did not believe the judicial system would treat him fairly and because he did not trust the court interpreter to translate his defense adequately.[3]

Mexican Americans also complained that the courts were insensitive to their background. One complaint was that the courts did not take into appropriate account the poverty in which Mexican Americans generally lived. "A $15 ticket is nothing to the white middle class but is a financial crisis to the chicano."[4] A probation officer in Phoenix, Arizona, discussing standards for placing first offenders on probation, said that many Mexican Amercians are high school dropouts and many have broken families. These facts are so common, he thought, that it may be unjust to refuse probation to an individual because such factors appear in his background if other circumstances such as regular employment could justify a belief that the offense would not be repeated.[5]

Mexican Americans also felt that many judges lacked knowledge of their culture and that this had an adverse effect on them in the courtroom. Rev. Roger Wood, an Episcopal priest who worked in a Mexican American area of Los Angeles, said that a young Mexican American in East Los Angeles was arrested on the grounds of possessing marijuana found in the pocket of the shirt he was wearing. The young man claimed he was wearing a friend's shirt when he was arrested. The judge, according to Reverend Wood, said he was tired of

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[1] Interview with a group of young men in Lariat, Colorado, who did not wish to be identified, Dec. 14, 1967.

[2] Western Center Study at 174. *Supra* n. 57, chap. 1. "Chicano" is a term used by some Mexican Americans to refer to members of the Mexican American group.

[3] Los Angeles T. at 148–51.

[4] Western Center Study at 145.

[5] Interviews with Jess Cuellar, Feb. 27–28, 1968.

hearing that excuse "because we are not that much of a borrowing culture." Reverend Wood thought that, whether or not the boy's alibi was true, this remark showed the judge's ignorance of behavior in East Los Angeles:

> Well, right there he lost the whole case for this boy because it is that kind of a life in East Los Angeles, the boys are constantly wearing each other's shirts. So all the majesty of the law, the flags and everything else, went down the drain, because this smart man, with his robe on, doesn't know anything about life.[6]

Attitudes in northern New Mexico—Alienation of Mexican Americans from the courts and the law appears particularly acute in northern New Mexico. Alex Mercure, a lifelong resident of that State who is director of the Home Education Livelihood Program (HELP), a northern New Mexico community development program, described the special problems existing in this area at the New Mexico State Advisory Committee's Albuquerque meeting.

Long before the United States acquired the territory of New Mexico from Mexico, Mercure related, a traditional legal system had defined rights to land, water, timber, and grazing area. The region was settled in the 17th century by families from Mexico who displaced the original Indian inhabitants. The Spanish settlers developed their relationship to the land over a long period of time. As Mercure explained, for the Spanish villagers land was not a commodity to be bought and sold. It was used for stock-raising and subsistence farming. The land belonged to the family and it was handed down from generation to generation. Rights to the use of communal land, boundaries, and titles were known to the members of each community and defined in a way which was less formal than the system in use in the United States.[7]

The United States acquired this territory as a result of the Treaty of Guadalupe-Hidalgo which ended the U.S.-Mexican War of 1846. The impact of this change in Government on the Spanish settlers was profound. As described by a descendant of one of the original Spanish settlers families:

> They were now subject to impositions of a new and powerful nation whose cultural orientation and social and legal systems were diametrically opposed to theirs. . . .[8]

The new Government proceeded to impose its system of law upon the territory. As the Federal land holdings were being defined [the Federal Government now owns more than 60 percent of the land in northern New Mexico] individuals and communities lost their holdings. In some cases, the land was lost through lack of understanding the new system of proving and recording land titles. In other cases, proof of land ownership, which was acceptable under the Spanish-American system, was not acceptable under the new legal system. In addition, unscrupulous land speculators and Government officials took advantage of the difficulties of the new legal machinery which confronted the Spanish settlers. Mercure explained that while in most of these cases the procedural formalities of the new laws were followed, the Spanish people did not understand the laws and could not protect their rights under them. At

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[6] Los Angeles T. at 52–53. On Sept. 22, 1969, the Commission received a complaint alleging that on Sept. 2, 1969, a judge of the superior court of the county of Santa Ana, Calif., characterized Mexican Americans as "animals" and made other extremely prejudiced remarks during a juvenile court proceeding against a Mexican American youth. The vigorous protests of Mexican American community leaders throughout California reflected their concern with judicial insensitivity towards their group. Commission complaint files.

[7] For a general history of the land problems of New Mexico, see Knowlton, *supra* n. 2 p. 14. Gonzalez, *The Spanish Americans of New Mexico: A Distinctive Heritage,* 35 (U.C.L.A. Mexican-American Study Project Advance Report No. 9, 1967) ; Nabokov, "The Land is the Mother" in The New Mexican (published in Santa Fe, N. Mex.) Jan. 23, 1968, Feature Section, p. 1.

[8] Tomas C. Atencio, "The Forest Service and The Spanish Surname American." Cabinet Committee Hearings, at 35.

the same time, the people felt that the land was theirs and that they should continue to enjoy it.

> It is very difficult for the people who have lived there—who can trace their living there for five generations—to think that an agency of the Federal government, created in 1905, such as the Forest Service, could own the property which had been in their family for 100 years before that.[9]

The feeling that the law is being used to create and perpetuate injustice has led to a conflict of crisis dimensions in northern New Mexico. Tension is high between local people and the Forest Service; there are difficulties in enforcing the law in the area, and there is complete distrust of the courts.[10]

> . . . [R]ight now, the man we are speaking of in northern New Mexico does not see the legal process or court process . . . as holding any promise to him whatsoever. As a consequence, he is probably quite reluctant to even think that the Government might offer protections as well as punishment.[11]

[9] Albuquerque T. at 234.

[10] See discussion of the conflict between New Mexico law enforcement officers and the Alianza Federal de Mercedes in chap. 2.

[11] Albuquerque T. at 243.

Mercure expressed the view that our legal system must be made sufficiently sophisticated to accommodate people of varying cultural origins. He stated:

> It seems to me that if we are going to have justice, then we must also develop the kind of sensitivity which we need for the values of people to whom the justice is being directed. . . .[12]

Summary

Mexican Americans are distrustful of the courts and believe them to be insensitive to Mexican American background and culture. These feelings are most acute in northern New Mexico where descendants of the Spanish settlers have lost their land, and thus their means of livelihood. This has often occurred through the operation of the legal system imposed on them by the Anglo settlers of their territory. They view the law as an instrument to create and perpetuate injustice, rather than as an instrument to solve their problems.

[12] Albuquerque T. at 237.

PART III. LANGUAGE

Chapter 9

Language Disability and Inequality Before the Law

Most Mexican Americans in the Southwest are bilingual and have no difficulty communicating with the police or understanding proceedings in a courtroom. But there are areas in the Southwest where some Mexican Americans—particularly older people and Mexican nationals recently arrived in the United States—have little or no knowledge of English. In primarily rural northern New Mexico—where it has been possible to function only with a knowledge of Spanish, the mother tongue—a significant portion of the local population speaks little, if any, English and Spanish has been the primary language from the earliest settlements until today. In southern Texas, where there are large numbers of Mexican nationals as well as first and second generation Mexican Americans, many persons speak Spanish exclusively.

It is common in the Southwest, moreover, to find Mexican Americans who speak Spanish in the home, with friends, on social occasions, and at work among other Mexican Americans; they use English only as a second language when necessary. Many Mexican Americans have enough familiarity with English to "get along," but have more difficulty than the average layman in understanding courtroom proceedings and legal matters.

In 1963 the California State Advisory Committee to the United States Commission on Civil Rights recognized the problem of language disability and the effect it had on Spanish-speaking people in their contacts with the police and the courts:

> It appeared to the Committee, . . . that while the Spanish-speaking groups do not feel that their problems are as exacerbated as the Negro's, their problems are complicated by the additional fact that many speak mainly Spanish. Often, apparently, Spanish-speaking persons literally do not understand what is happening to them in contacts with the police, district attorneys and some courts. . . .
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> This language difficulty seems a real one to the Committee. It also appears that many law enforcement officials are not cognizant of it.[1]

Legal recognition of Spanish language

Although Congress usually imposed an English language requirement as a condition to an area's becoming a State, Congress approved constitutions for California,[2] Colorado,[3] and New Mexico[4] that provided for the publication of their State laws in both Spanish and English. The subsequent California constitution, however, dropped this provision and limited publication of official proceedings to the English language.[5] Colorado's provision ran out in 1900 and New Mexico's in 1931.

In the 19th century the Kearny Code, promulgated in 1846 by Brig. Gen. S. W. Kearny for the Government of the newly acquired territory of New Mexico, contained a provision requiring courts to keep records of their proceedings in English and Spanish.[6] However, this provision was not continued in the New Mexico Organic Act of 1850, the act of Congress conferring powers of Government upon the territory of New Mexico.[7] Subsequently Congress authorized the New Mexico Assembly to employ a translator and interpreter, and two additional clerks for each house of the assembly. Of the four clerks, two were to be qualified in English and two in Spanish.[8] In 1884 Congress went further and authorized funding the translation of the bills, laws, and journals of the territory's legislature with the proviso that the legislative

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[1] California State Advisory Committee to the U.S. Commission on Civil Rights, *Police-Minority Group Relations in Los Angeles and the San Francisco Bay Area* (1963) at 37.
[2] Calif. Const., art. 11, § 21 (1849).
[3] Colo. Const., art. 18, § 8 (1876).
[4] N. Mex. Const., art. 20, § 12 (1911).
[5] Calif. Const., art. 4, § 24 (1879).
[6] Kearny Code, Records and Seals, § 4 (1846).
[7] Act of Sept. 9, 1850, ch. 49, 9 Stat. 446.
[8] Act of March 3, 1853, ch. 148, § 2, 10 Stat. 257.

proceedings, records, and laws of the territory also be printed in English.[9]

Today New Mexico's statutes still reflect the fact that there are substantial numbers of Spanish-speaking citizens in that State. For example, certain proceedings of boards of county commissioners, city and town councils, boards of trustees, and of all other officers of any county, municipality, district, or other subdivision of the State are required to be published in English or Spanish or both. In counties, cities, or towns where the population is not less than 75 percent English-speaking, publication in English is sufficient; and where the population is not less than 75 percent Spanish-speaking, publication in Spanish is sufficient; and where the population is between 25 percent and 75 percent using either language, publication is to be in both English and Spanish.[10] In counties where the board of county commissioners deems it expedient, the notice of election required by State law is printed in English and Spanish; [11] instructions to voters printed by the secretary of state must be printed in English and Spanish; [12] election return books prepared by the secretary of state for each precinct and election division in the State are printed in English and Spanish; [13] and forms furnished by the secretary of state for voter registration are printed in Spanish as well as English.[14]

California has also recognized that some of its citizens are literate in Spanish but not in English. In 1968 the legislature provided for the publication in Spanish of a synposis of the California traffic laws.[15] The State department of welfare is empowered to publish its informational pamphlets and related materials in Spanish as well as English.[16] And all farm labor contractors in California are required to have and display a written statement in English and Spanish showing the rate of compensation they receive from the grower and the rate of compensation they pay their employees.[17]

Police contacts

A Mexican American who is illiterate in English may experience special problems in his contacts with law enforcement officers. If he does not understand the officer's questions or commands, an ordinary contact can escalate into a more serious situation.

Armando Morales, chairman of the Council of Mexican American Affairs in California and of the police-community relations committee of the Council in 1967, reported an incident between a Spanish-speaking Nicaraguan and a police officer, which, in addition to showing the bias of the officer, suggests how misunderstanding resulting from language disability can inflame a routine contact.

> In April, 1966 a Spanish-speaking adult male and his friends were fixing a flat tire on the Hollywood freeway. A police officer stopped and asked what they were doing. The driver of the car fixing his tire with a cigarette in his mouth, looked at the police officer and did not answer as he could not speak English. The officer became very angry and demanded that he remove the cigarette from his mouth, stand up and show him some respect! The driver of the car smiled and continued to work on his tire. The officer became more angry, put him over the car and began beating him and calling him a dirty Mexican.[18]

A former police chief in a small community in southern Colorado—identifying language as a factor in the lack of understanding between Mexican Americans and law enforcement offi-

[9] Act of Feb. 14, 1884, ch. 6, 23 Stat. 2.
[10] N. Mex. Stats. Ann. § 10–2–11 (1953).
[11] N. Mex. Stats. Ann. § 3–3–1 (Additional Supp. 1967).
[12] N. Mex. Stats. Ann. § 3–3–12 (Additional Supp. 1967).
[13] N. Mex. Stats. Ann. § 3–3–20 (Additional Supp. 1967).
[14] N. Mex. Stats. Ann. § 3–2–41 (1953).
[15] Calif. Vehicle Code § 1656 (West Supp. 1968).
[16] Calif. Welfare and Institutions Code § 10607 (West 1966).
[17] Calif. Labor Code § 1695 (West Supp. 1968).
[18] A. Morales, *Historical and Attitudinal Factors Related to Current Mexican American Law-Enforcement Concerns in Los Angeles* (Apr. 22, 1967) at 7. (Unpublished).

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cials—said officers in his community should receive training in Spanish. He noted that some Mexican Americans in his community cannot explain themselves properly in English.[19] The New Mexico State Police, according to Chief Joseph Black, have tried to overcome a similar problem in northern New Mexico by assigning only bilingual officers to that part of the State.[20]

One of the law enforcement agencies from California responding to the Commission's questionnaire stated:

> Some members of the community do not speak English or have a poor grasp of English. This requires additional effort on the part of the officer to either learn Spanish or to provide proper translation so that the rights of the public are safeguarded.

Similar comments were received from agencies in all five States. Of the 175 agencies responding to the question whether the agency had a course in conversational Spanish for Anglo officers, however, only six answered in the affirmative.

Gonzalo Cano, with the Community Relations Service of the U.S. Department of Justice in Los Angeles, stated that a fundamental cause of discontent and misunderstanding in the Mexican American community is the inability of the majority community and the police department to understand the Spanish language and Mexican American culture. This inability creates problems for the police as well as the community, he said. A Mexican American youth, Cano reported, was arrested by a police officer in San Jose, California and charged with inciting to riot. The police thought the youth, who was speaking in Spanish when he was arrested, was inciting a group of Mexican American teenagers to demonstrate and riot. Actually, he was trying to calm the crowd but, because the officer did not understand Spanish, he arrested the one person who was trying to prevent possible violence.[21]

An 18-year old youth in Albuquerque reported that one evening in December 1967, he had been drinking and began fighting with his wife, whereupon his father-in-law summoned the police. When the police arrived, the youth said, they ordered him out of the house, followed him outside, and told him he was under arrest. Apparently not understanding that he was under arrest, he stated, he began to walk away from the officers. According to his account, the officers knocked him down, a fight ensued, and he knocked one of the officers to the ground. The young man was finally subdued, he said, taken to the city jail, and charged with criminal offenses. Not at ease in English, he told a Commission staff member that he did not understand the charges, but pleaded guilty to avoid the extra expense of a trial.[22]

Several Mexican Americans said that some police officers are very unsympathetic when dealing with people who have difficulty speaking English. A witness told the California State Advisory Committee:

> And I know also, and I have heard many times that the [police] officers will get very angry, arresting officers especially, . . . when a person they stop begins speaking Spanish. They fear the worst—maybe rightfully so, I don't know, but they fear the worst, and they act the worst![23]

Language disability may cause a Mexican American to sign a statement or confession whose contents he cannot read or understand. A Mexican American in Albuquerque with a criminal record said that as a young man he signed a statement he had been told would absolve him of charges against him, and then was sent to prison on the strength of his confession. The same person stated that in February 1968, he and a friend were arrested for burglary by officers of the Bernalillo County Sheriff's Department and taken to the county jail. Asked to sign a statement, he stated, he refused but his friend agreed. Upon intervening to warn his friend not to sign anything, he was allegedly threatened with physical retaliation by one of the officers present. The informant reported that he feared the officers would take advantage of his friend, who did not under-

[19] Interview with Don Wells, Dec. 12, 1967.
[20] Albuquerque T. at 23–24.
[21] Interview with Gonzalo Cano, June 11, 1968.
[22] Staff interview.
[23] Los Angeles T. at 17. See also interview with Gil Florence, Albuquerque, N. Mex., Feb. 5, 1968. In his recent book about police abuses in New York City, Paul Chevigny noted this problem:

> Policemen often take the speaking of a foreign language to be a form of defiance. A policeman told one of the staff lawyers at the NYCLU that he had once spoken to a Puerto Rican boy; when the fellow answered in Spanish, he could not understand, and the other boys laughed. The officer slapped him to maintain his authority. Fantastic as it may seem in a polyglot city like New York, this is not a rare occurrence. *Police Power* (1969) at 69–70.

stand English very well, in preparing a statement for his signature.[24]

Court contacts

Of the five States, Colorado and California currently *require* that English be used in the courtroom,[25] and English is the language used most often in proceedings in the Southwest, particularly in courts of record. There are few judges in the Southwest who speak Spanish.[26] Thus, a Mexican American whose English is poor may be handicapped in the courtroom.

Criminal cases—Many lawyers stated that the language problem puts some Mexican Americans to significant disadvantage in criminal cases. Courts often assume that a defendant who can "get along" in English can understand the charges against him and the proceedings in court. A number of people stated that many judges in the Southwest do not realize the extent of language limitation among Mexican Americans and are unaware of the extent to which it interferes with their ability to defend themselves.[27]

Many Mexican American defendants who have some knowledge of English lack sufficient proficiency to understand fully the nature of the charges or proceedings against them. These defendants cannot plead intelligently, advise their lawyers with respect to the facts, fully understand the testimony of witnesses against them, or otherwise adequately prepare or assist in their own defense.

A number of lawyers and others in the Southwest cited this problem and its adverse effects. An attorney in Phoenix was critical of the public defender's office in his community because it did not have any Mexican American attorneys on its staff, nor any attorneys who could speak or understand Spanish. In his opinion many Mexican American defendants were not being adequately represented by the public defender's office because of the language barrier.[28] A probation officer in Phoenix offered a similar criticism and stated that attorneys in the defender's office were dependent on a Mexican American investigator to interpret for them in the office and in court. The probation officer thought the investigator was not well qualified as an interpreter and that this led to inadequate representation of certain Mexican American defendants.[29]

A similar situation was said to exist in the public defender's office in Denver. At the time the director was interviewed by a Commission staff member, nine lawyers, three investigators, and four clerical workers were on his staff. None of the attorneys was Mexican American and none spoke Spanish. The attorneys were dependent upon a Mexican American investigator and a Mexican American secretary for interpretation.[30]

The project director of Centro Hispano in East Los Angeles said that in his opinion the defender's office in East Los Angeles could not be fully responsive to community needs because it had a heavy workload, and "none of the public defenders really could speak Spanish."[31] The public defender for Los Angeles County stated that he was authorized 235 lawyers,[32] but could only think of one Spanish surnamed lawyer and a dozen Spanish-speaking lawyers who were employed by his office.[33]

Most defendants in criminal cases in the five States, moreover, do not have lawyers.[34] Even an English-speaking defendant who lacks funds to employ counsel may find a courtroom proceeding conducted in English bewildering. The problem is compounded for a defendant whose

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[24] Staff interview.

[25] Colo. Rev. Stats. § 37–1–22 (1963); Cal. Civ. Proc. C. § 185 (West 1954). However, in 1966 California repealed art. 4, § 24 of its Constitution that required the use of English in State courts.

[26] A justice of the peace in New Mexico told the Commission's State Advisory Committee in his State that many of the Mexican Americans who appear in his court in Lovington, N. Mex. find it difficult to function in English, so he conducts court in Spanish. Roswell T. at 121. An attorney appearing before the California State Advisory Committee said that Spanish is often used by the Mexican American judges in the municipal courts in East Los Angeles. Los Angeles T. at 117.

[27] A Los Angeles attorney stated that as many as 30 or 40 percent of the people appearing in municipal court in East Los Angeles would feel more comfortable if an interpreter were appointed, and that for many of them it was a necessity even though some judges in that court address certain defendants in Spanish. Los Angeles T. at 118.

[28] Interview with Robert J. Corcoran, Feb. 27, 1968.

[29] Interviews with Jess Cuellar, Feb. 27–28, 1968.

[30] Telephone interview with Edward Sherman, Nov. 21, 1967.

[31] Los Angeles T. at 31.

[32] *Id.* at 196.

[33] *Id.* at 197. He also pointed out that the office employed 26 investigators three of whom had Spanish surnames and were bilingual. In addition, there were approximately a dozen female clerical employees who were bilingual. When a defendant represented by his office is in custody the non-Spanish-speaking attorneys use a trustee [another prisoner] at the jail to interpret during interviews and trial preparation. If the client is out on bail he comes to the defender's offices where one of the bilingual female clerical employees serves as an interpreter. *Id.* at 198.

[34] See discussion *supra*, p. 54.

grasp of English is poor. Not only is his confusion multiplied, but he may be more reluctant to speak out in court.

A superior court probation officer in Phoenix reported an incident in Aguila, Arizona illustrating that language disability can produce not only misunderstanding, confusion, and inappropriate reactions by the police but injustice in the courts as well for a Mexican American with a language barrier and no counsel. In 1966, a Mexican American who had been drinking struck his daughter for being tardy in bringing him some shampoo while he was showering. His wife called the police and told them of the assault. Erroneously understanding his wife to mean that her husband was sexually assaulting the daughter, the police arrived with drawn guns. The father, almost shot during the process of arrest, was taken before a city magistrate and charged with sexually molesting his daughter. Understanding little English and thinking he was being charged only with drunkenness, the father made no objection to the charge. No interpreter was present to explain the charge or to help him. He was then placed in the county jail in Phoenix, where he remained for 2 months awaiting trial because he could not afford the high bail. When he was able to see the defendant and converse with him in Spanish, the probation officer learned the facts and explained them to the magistrate. As a result, the case was dismissed.[35]

A young man from Monte Vista, Colorado said that he and another Mexican American were charged with racing their cars and given summonses to appear in police court. Although he fought the charge because he thought he was innocent, he stated the other man pled guilty because he did not understand English very well, did not know what was happening when he appeared in police court, and to plead guilty was the easiest thing to do under the circumstances.[36]

Civil matters—Mexican Americans who have difficulty speaking English also have problems in civil matters—many of which have serious, even drastic, personal consequences.

In *Sandoval v. Rattikan*,[37] the plaintiff brought a trespass action in a Texas court against Mr. and Mrs. Sandoval, illiterate indigents who spoke only Spanish, to try the title to land upon which they lived. Two weeks before trial the Sandovals' lawyer withdrew from the case and they obtained the services of a Nueces County legal aid attorney. The trial was short and the court rendered judgment for the plaintiff granting him possession of the property under his purported deed. Then the Sandovals with the assistance of new counsel moved for a new trial claiming they had a complete and meritorious defense which had not been presented by their Legal Aid Society attorney. The defense inadequately presented at trial was that the deed executed by the Sandovals and assigned to the plaintiff was really a mortgage given to secure a debt and the plaintiff knew it. At the hearing on the motion for a new trial the legal aid attorney readily admitted he had not been properly prepared at trial. One excuse he gave was his inability to communicate with his clients since he spoke only English and they only Spanish. Consequently, there were aspects of the case that he did not really understand and others that he did not develop completely.[38]

The language problem may be even more serious in a civil matter where the Mexican American litigant does not have counsel. Willie Gonzales of Silver City, New Mexico, active in community problems and local organizations, told of a Mexican American and his common-law wife who were declared unfit parents based on a complaint by the local welfare department. As a result, Gonzales stated, three of their children were removed from their custody. Lacking legal counsel, he said, the parents did not object because "[T]hey can't get across to anybody. They don't speak English fluently enough to be able to present a case properly." [39]

[35] Interviews with Jess Cuellar, Feb. 27–28, 1968.

[36] Interview with residents of Monte Vista, Colorado, who did not wish to be identified, Dec. 14, 1967.

[37] 395 SW 2d 889 (Texas, 1965); cert. denied, 385 U.S. 901 (1966).

[38] After a lengthy hearing the trial court overruled a motion for a new trial. *Id.* at 891. The Texas Court of Appeals affirmed the decision, finding that the Sandovals had been afforded an opportunity to present their defense, and that there was not sufficient evidence of a meritorious defense presented during the hearing on the motion for a new trial to warrant a holding that the trial judge had abused his discretion. The United States Supreme Court denied certiorari with two Justices dissenting on the "issues as to the scope of the requirement, derived from the Due Process Clause of the Fourteenth Amendment, that state courts in civil actions must afford to each litigant a 'proper opportunity to present his evidence.'" 385 U.S. 901 (1966).

[39] Roswell T. at 12.

In northern New Mexico, land and water rights are of critical importance to Spanish American farmers whose ignorance of English often results in the forfeiture of such rights. Alex Mercure,[40] told the New Mexico State Advisory Committee:

> When they get a legal document which tells them, 'Your water is being adjudicated,' they really do not understand what they have to do. If somebody did understand, he would pick up and drive into Santa Fe and register his water rights perhaps. He doesn't know that this is required.[41]

Language also handicaps many Mexican Americans in civil matters arising outside of a courtroom context. Drayton Wasson, a Spanish-speaking justice of the peace in Lovington, New Mexico, said that he often must assist Mexican Americans in his community who have difficulty in filling out English-language forms that have an important effect on their legal rights and lives. These include such matters as reports to the State police and insurance companies about automobile accidents, passport forms, and other documents.[42]

Communication with probation and parole officers—Language disability of a Mexican American can seriously hinder a defendant's opportunity to receive probation or parole and can create difficulties for him if he attains it.

The state chairman of the civil rights section of the League of United Latin American Citizens (LULAC) of California said that in his State there are not enough Mexican American or bilingual people in probation and parole offices.[43] George Gilpin, Chief of the United States Probation and Parole Office in San Antonio, said language disability was a particular problem for parolees and probationers in rural areas of southern Texas.[44] The single Spanish surnamed parole officer in his office was used as an interpreter. If a parolee or probationer who had no knowledge of English entered the office when the Spanish-speaking parole officer was out, he either had to wait for him or come back at another time.[45] A State probation officer in Albuquerque, New Mexico, said that many of the people he had supervised could not speak English very well. As a result, he said, they could not understand what their rights were and were apprehensive about any contact with the law.[46]

Rev. Charles White, program director for a neighborhood settlement house in East Los Angeles, told of an 18-year old Mexican American who had had a series of run-ins with the police. While he was on probation the young man tried to commit suicide. His probation officer knew nothing about the incident. Reverend White attributed this to several factors, including the language barrier.[47]

John Urioste, of the Community Action Program in Carlsbad, New Mexico, reported that in the fall of 1967, Mrs. Juanita Rodriguez, who had two grandchildren in mental institutions, was notified that they could visit her during Christmas. She had to make the arrangements with the juvenile probation officer, but since her English was poor and the probation officer spoke no Spanish, she asked Urioste to interpret for her. When Urioste began to translate the probation officer's remarks to Mrs. Rodriguez, the probation officer objected. Mrs. Rodriguez explained that she did not think that she could communicate properly in English, whereupon the probation officer told them they would have to go out into the hall in order to speak to each other in Spanish. Urioste said he was so surprised at this request that he did not object and did go out of the room. He also stated that there were many probationers who had no knowledge of English at all and were faced with an impossible situation.[48]

Interpreters

Police—Amador Solis, who had been a criminal court interpreter in Los Angeles, stated that in Los Angeles interpreters are first provided for criminal defendants when they are arraigned.[49] Prior to arraignment, bilingual police officers are used as interpreters. Most police

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[40] *Supra* p. 61.
[41] Albuquerque T. at 236.
[42] Roswell T. at 122.
[43] Los Angeles T. at 312.
[44] Interview with George H. Gilpin, Oct. 8, 1968.
[45] *Id.* Gilpin indicated that there were several Spanish surnamed parole officers in the El Paso office and others in the Del Rio office because of the large concentration of Spanish speaking parolees and probationers in those districts.
[46] Interview with Albert E. Cipriani, Apr. 23, 1968.
[47] Los Angeles T. at 34–5. In his opinion language disability is an important factor precluding equal justice for many Mexican American citizens throughout the entire range of contacts a citizen has with the law, including police, attorneys, court officials and prison officials, as well as probation and parole officers. *Id.* at 37–8.
[48] Roswell T. at 142–4.
[49] Interview with Amador Solis, July 13, 1968.

departments follow a similar practice. Smaller police departments that have few if any Mexican American or bilingual officers are dependent on the services of private citizens.[50] In some cases no one may be available to interpret.

Courts—The New Mexico constitution provides:

> In all criminal prosecutions, the accused shall have the right . . . to have the charge and testimony interpreted to him in a language that he understands . . . .[51]

New Mexico is unique among the five Southwestern States studied in clearly establishing the *right* to interpretation. Although all five States have statutes providing for the appointment and compensation of interpreters,[52] the State courts in the Southwest have generally taken the position that the question as to whether an interpreter is to be appointed for a particular defendant is within the discretion of the trial court; appellate courts will not interfere unless there has been an abuse of that discretion.[53] A defendant's rights are held protected if he fails to tell the trial court that he has a language disability and fails to request an interpreter,[54] or if he is represented by an attorney who understands the testimony of the witnesses.[55]

A defendant's right to have an interpreter provided for him has received relatively little discussion in the Federal courts.[56] To date there have been no Federal court decisions on whether a non-English speaking defendant in a criminal case in a State court has a constitutional right to have an interpreter appointed. In a recent decision the Court of Appeals for the Second Circuit suggested that an indigent defendant might have a constitutional right to have an interpreter appointed in a Federal criminal trial just as he has a right to appointed counsel. The court held, however, that the facts in the particular case did not warrant the appointment of an interpreter.[57]

Although some steps have been taken to provide for professional interpreters in criminal cases arising in Federal courts and State courts of record in the Southwest, many Mexican American defendants are tried in inferior courts where makeshift arrangements are the rule. Judge Harry Robins of the Albuquerque municipal court stated that he uses his bilingual court clerk as an interpreter when necessary.[58] The Mexican American clerk of Judge Mario Cota-Robles of the municipal court in Tucson translates the testimony for Mexican American defendants who cannot speak or understand English.[59] The judge, however, thought it would be better to have a professional interpreter for the job.

Others criticized the qualifications of such *ad hoc* interpreters. Hector Morales, a city councilman in Tucson, characterized the ability of individuals used as interpreters in local

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[50] A Spanish surnamed woman in Hobbs, N. Mex., who works as a registered nurse, told a Commission staff member that she was often called upon to act as an interpreter for the police department. Interview with Mrs. James Rivera, Apr. 2, 1968. A Mexican American businessman active in community affairs in Lovington, N. Mex. said that he was occasionally called upon to act as an interpreter for the police. Interview with Joe Trujillo, Apr. 3, 1968.

[51] N. Mex. const., art. II § 14. *State v. Cabodi,* 18 N.M. 513, 138 P. 262 (1914). All of the Southwestern States, except California, have constitutions which guarantee the right of a defendant in a criminal case to confront the witnesses against him, similar to the right guaranteed by the sixth amendment of the United States Constitution. Ariz. const., art. II, § 24; Colo. const., art. II, § 16; N. Mex. const., art. II, § 14: Tex. const., art. I, § 10. In addition, all five Southwestern States have constitutions which guarantee the right to due process of law, similar to the right guaranteed in the fifth amendment of the United States Constitution. Ariz. const., art. II, § 4; Calif. const., art. I, § 13; Colo. const., art. II, § 18; N. Mex. const., art. II, § 18; Tex. const., art. I, § 19.

[52] Ariz. Rev'd Stats. § 12–241 (1956); Cal. Evidence Code § 750 *et seq.* (West 1966); Colo. Rev'd. Stats. § 154–1–13 (1963); N. Mex. Stats. §§ 16–1–6, 16–5–6, 16–3–45–47, 36–5–8–9 (1953); Tex. Stats. Ann. § 38.30 (1966).

[53] *Viliborghi v. State,* 45 Ariz. 275, 43 P. 2d 210 (1935); *People v. Estnay,* 26 Cal. Rptr. 757 (1962); *Garcia v. State,* 151 Tex. Cr. 593, 210 SW 2d 574 (1948).

[54] *Zunago v. State,* 63 Tex. Cr. 58, 138 SW 713 (1911).

[55] *Escobar v. State,* 30 Ariz. 159, 245 P. 356 (1926); See annotation in 140 A.L.R. 769.

[56] It is interesting to note that Article 2(a) of the Canadian Bill of Rights, adopted in 1960, guarantees to every person the right to the assistance of an interpreter in any proceedings in which he is involved if he does not understand or speak the language in which the proceedings are conducted.

[57] *U.S. v. Desist,* 384 F. 2d 889 (2nd Cir. 1967). See also *Cervantes v. Cox,* 350 F. 2d 855 (10th Cir. 1965). But see *Gonzales v. People of Virgin Islands,* 109 F. 2d 215 (3rd Cir. 1940). *In U.S. v. Desist,* the court cited the United States District Court in Puerto Rico where a full-time Spanish interpreter has been hired and is provided at no expense to any defendant who needs one because, as the court said, "the need for an interpreter in that district is so great that sound administrative principles require that one be available at all times." Currently, three full-time Spanish-speaking court interpreters are employed by the Federal courts in the Southwest: two in the Western District of Texas, one at El Paso and one at San Antonio; and, one in the Southern District of California at San Diego. Letter from William E. Foley, Deputy Director, Administrative Office of the United States Courts, to Lawrence B. Glick, Acting General Counsel, U.S. Commission on Civil Rights, Aug. 18, 1969.

[58] Interview with Judge Harry Robins, Apr. 25, 1968.

[59] Interview with Judge Mario Cota-Robles, Mar. 5, 1968.

courts as "at the best, . . . only fair . . . ." [60] In his opinion at least one well qualified full-time interpreter should be hired for use in each of the city and county courts.

Criticism also was leveled at professional interpreters assigned to various criminal courts. Richard Alatorre, formerly director of the Southwestern Regional Office of the Legal Defense Fund in Los Angeles,[61] reported that in some instances the testimony of witnesses against a defendant was not translated to the defendant.[62] Amador Solis—who, as previously noted, had been an interpreter in the criminal courts of Los Angeles—criticized the linguistic ability of most interpreters in criminal cases in Los Angeles. According to Solis, the position does not pay enough; the requirements for employment, including the test given to applicants, are insufficient; and most of the incumbents are inexperienced. Solis declared that an interpreter stays with the criminal courts only long enough to get some experience and then leaves for a better paying job as an interpreter in civil cases.[63]

An attorney in San Antonio told Commission investigators that there was an interpreter available in the Bexar County courts but that he was not "worth a damn." [64] In his opinion a qualified interpreter should be a Mexican American from southern Texas familiar with the local idioms. He was also critical of the fact that the United States District Court in San Antonio did not have a full-time professional interpreter.[65]

Carl Carlton, director of student personnel services at New Mexico Junior College in Hobbs, said he had been called upon frequently by local courts and by court-appointed attorneys to act as an interpreter for Spanish-speaking defendants.[66] He said that he was considered qualified for this job because he had college degrees in language. He also had been educated in Mexico and reared in Texas among Spanish-speaking people. He felt unprepared, however, to assume the responsibilities of court interpreter because he had not had any legal training. He had studied some legal subjects on his own time and at his own expense in an attempt to make himself better able to assume this responsibility. In his opinion, interpreters should be trained in legal terminology like legal secretaries, and in addition possess a general knowledge of legal procedures. Several other people in Lovington, New Mexico also stressed the need for interpreters who were not only familiar with conversational Spanish and local idioms, but also had had legal training.[67]

While it is important that an interpreter be provided when necessary, it is also important that the interpreter chosen be unbiased and have the confidence of the defendant. Complaints were made that in some lower courts police officers were called upon to act as interpreters. A Mexican American sergeant in the San Diego Police Department stated that he had served as an interpreter in the San Diego courts.[68] Gonzalo Cano, an officer with the Community Relations Service of the Department of Justice, said that he knew of one case in San Fernando, California where a police officer was used as an interpreter in court and that it happened often enough to warrant concern.[69]

Summary

Although many Mexican Americans in the Southwest are bilingual and have no difficulty with English, many others are handicapped in their relations with law enforcement officials or in courtroom proceedings by a language disability.

Special problems arise for Mexican Americans with a language disability who cannot understand a law enforcement officer's questions or commands. Ordinary contacts can escalate into serious situations. However, very few law enforcement agencies have taken steps to give their officers instruction in conversational Spanish.

Mexican Americans with a language disability also are at a disadvantage in the courts.

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[60] Interview with Hector Morales, Mar. 3, 1968. His opinion of the quality of interpreting was supported by a local Mexican American attorney who agreed that professional interpreters should be hired. Interview with Manuel Garcia, Mar. 5, 1968.

[61] The Southwestern Regional Office of the NAACP Legal Defense and Educational Fund handles a substantial number of cases involving Spanish surname litigants.

[62] Interview with Richard Alatorre, June 10, 1968.

[63] Interview with Amador Solis, July 13, 1968; see also interview with Richard Alatorre, June 10, 1968; and interview with Frank Munoz, July 15, 1968.

[64] Interview with Matt Garcia, Jr., Oct. 8, 1968.

[65] *But see supra* n. 57.

[66] Interview with Carl Carlton, Apr. 2, 1968.

[67] Interviews with Drayton Wasson, Apr. 2, 1968; Dr. H. W. Gillette, Apr. 3, 1968; Joe Trujillo, Apr. 3, 1968.

[68] Interview with Carlos Gutierrez, July 16, 1968.

[69] Interview with Gonzalo Cano, June 2, 1968.

Many Mexican American criminal defendants with a language disability do not fully understand the nature of the charges or proceedings against them. These defendants cannot knowingly plead to these charges, advise their lawyers with respect to the facts, fully understand the testimony of witnesses against them, or otherwise adequately prepare or assist in their own defense. Mexican Americans who have difficulty with English also have problems with noncriminal legal matters.

Language disability also creates serious difficulties for Mexican Americans on probation or parole. They often have difficulty communicating with their probation and parole officer and the officer finds it hard to provide proper supervision.

The use of qualified interpreters is not widespread in the courts throughout the Southwest. Often makeshift arrangements for interpreters are made in the lower courts. Where professional interpreters are employed, they were criticized as being improperly trained or not skilled for work as a court interpreter.

Honorable John G. Benavides
Judge, 187th Judicial District Court
Bexar County, Court House
San Antonio, Texas

PART IV. PARTICIPATION BY MEXICAN AMERICANS IN AGENCIES OF LAW ENFORCEMENT AND JUSTICE

Chapter 10

Participation by Mexican Americans in Law Enforcement Agencies

Importance of participation

In the course of this study, the opinion was voiced that fear and distrust of Mexican Americans toward law enforcement agencies could be reduced by increasing the number of Mexican American law enforcement officers. For example, a Mexican American probation officer who had been a policeman in Phoenix for 6 years, stated that more Mexican American police officers were needed in that city.[1] He thought police teams could operate more effectively in Mexican American neighborhoods if at least one of the members was a Mexican American. The Mexican American officer, he believed, could put Mexican American citizens at ease, serve as an on-the-spot interpreter when necessary, and thus defuse tense police-citizen encounters and avoid miscarriages of justice.

The director of public safety for the city of Las Cruces, New Mexico, a Mexican American, stressed the importance of placing Mexican American law enforcement personnel at many levels of responsibility to secure the trust and confidence of the Mexican American community. He pointed out that in Albuquerque, no Mexican American law enforcement officer held a high ranking or policy-making position. In the same city the Spanish-speaking community continuously complained of police misconduct. By way of contrast he pointed to another large city in New Mexico where Mexican Americans held positions as police lieutenants and captains. Here police-community relations were excellent because the Spanish-speaking community, represented at all levels within the police department, was convinced that it would received fair treatment from the police.[2]

Extent of participation—In order to obtain information on the employment of Mexican Americans in law enforcement agencies, the Commission included questions on employment statistics in the questionnaire sent in October 1968 to 793 law enforcement agencies. These included 616 police departments, 168 county sheriffs, and nine State agencies in Texas, Arizona, California, Colorado, and New Mexico. The communities represented by these agencies ranged in size from less than 10,000 population up to and including metropolitan areas of more than 500,000 persons. The larger cities included Phoenix and Tucson, in Arizona; Los Angeles, San Francisco, San Diego, Oakland, and Sacramento, in California; Denver, Colorado Springs, and Pueblo, in Colorado; Albuquerque and Santa Fe, in New Mexico; Dallas, Houston, Ft. Worth, San Antonio, El Paso, and Austin, in Texas. Responses were received from 280 law enforcement agencies—about 35 percent of the recipients. There were 243 responses from police departments, 32 from sheriffs' offices, and six from State law enforcement agencies.

Police departments

Total employment in 243 police departments—uniformed, plainclothes, and civilian—was 34,717. Of this number, 1,989 or 5.7 percent, were Mexican American. This contrasts with the Mexican American proportion of the five-State region's population—11.8 percent.[3] There were found to be 23,944 uniformed officers, of whom 1,247 or 5.2 percent were Mexican American. Of the uniformed policemen, 10,648, or 45 percent, had never been on duty with a Mexican American officer at any time in their police careers.

Among plainclothes officers, 244 or 9.3 percent were Mexican American out of a total of 2,398. Of the 8,375 civilian employees, Mexican Americans totaled 518, or 6.11 percent.

Significant variations appeared in the extent to which Mexican Americans were employed by

[1] Staff interview.
[2] Albuquerque T. at 193–94.
[3] See introduction, p. x.

Police Employees—Uniformed, Plainclothes, and Civilian

Position	Uniformed			Plainclothes			Civilian Employees		
	Total	Mexican American	Percent Mexican American	Total	Mexican American	Percent Mexican American	Total	Mexican American	Percent Mexican American
Patrolman	17, 946	1, 001	5. 6				8, 375	518	6. 11
Detective				1, 554	151	9. 7			
Sergeant	2, 625	132	5	396	33	8. 3			
Lieutenant	898	29	3. 2	133	11	8. 3			
Captain	413	25	6	95	6	6. 3			
Inspector	68	3	4. 4	33	None	0			
Chief Inspector	27	2	7. 4	4	None	0			
Deputy Chief	60	2	3. 3	32	2	6. 3			
Chief	195	12	6	52	1	2			
Unclassified	1, 712	41	2. 4	99	20	20			
Totals	23, 944	1, 247	5. 2	2, 398	224	9. 3			

Total civilian employees.	8, 375
Total police employees.	26, 342
Total all employees.	34, 717
Total Mexican American civilian employees.	518
Total Mexican American police employees.	1, 471
Total MA employees.	1, 989
Percent MA's overall total.	5. 7

NOTE.—Cumulative statistics obtained from answers to Commission October 1968 questionnaires.

police departments. In some cities the Mexican American proportion of the police force approached the Mexican American proportion of the population. For example, in a Texas city with a Mexican American population of about 40 percent, 165 of the 623 uniformed police officers, or 26.5 percent, were Mexican Americans, and 40 of the 131 plainclothesmen [30 percent] were Mexican American. In a large city in New Mexico, with a 28 percent Mexican American population, about 20 percent of the uniformed policemen and 31 percent of the plainclothesmen were Mexican Americans.

Other cities—and these were in the large majority—had significantly poorer records. In a large Texas city which estimated its Mexican American population at 7 percent of the whole, less than 3 percent of the uniformed policemen and only 2 percent of the plainclothesmen were Mexican American. A large Colorado city with an approximate 30 percent Mexican American population had a uniformed police force that was 13.4 percent Mexican American.

Ethnic breakdowns were not received from the police departments of either Los Angeles or San Francisco—the two largest cities in California. The Los Angeles Chief of Police sent a letter to the Commission's Acting Staff Di-

rector in October 1968, in which he stated that much of the requested information was unavailable in his office, and that the assembling of what information he did have would require excessive man-hours. He further indicated that if the Commission would send a staff member to Los Angeles, a representative from his community relations office would assist him in gathering some of the information. According to the Los Angeles Human Relations Bureau, total employment in the Los Angeles Police Department for 1968 was 5,937 persons. The bureau was unable to provide any ethnic breakdown of this total, stating that employment statistics by race and ethnic origin were no longer kept by the police department.[4] An official Los Angeles publication for fiscal year 1967–68 indicates that there were 1,844 new appointments to the police department during that year, of whom 153, or 8.3 percent were Mexican Americans.[5] The 1960 census indicates that 10.5 percent of Los Angeles' population is Mexican American.

The Human Rights Commission of San Francisco informed the Commission that as of May 31, 1968, there was a total of 2,240 police department employees in San Francisco, of whom 33—slightly over 1.4 percent—were Spanish surnamed. There were 1,722 uniformed policemen, of whom 22—slightly under 1.3 percent—were Spanish surnamed.[6] Seven percent of San Francisco's population is Mexican American, according to the 1960 census.[7] In May 1967, the Commission held a public hearing in the Bay Area cities of San Francisco and Oakland. A staff report prepared in connection with that hearing concluded that: "In the Bay Area, Spanish Americans are underrepresented in local governmental employment as well as in Federal employment. . . . Of 1,722 uniformed policemen, only 22 are Spanish-speaking, of whom 19 are policemen-entrants. [There are 1,253 persons in the police-entrants' category.]"[8] According to 1967 figures collected by the Commission for its study of patterns of minority group employment in State and local government, in Oakland, which had a Spanish surnamed population in 1960 of 6.8 percent, only 0.6 percent of the uniformed police were Mexican American.[9]

In another large California city, where Mexican Americans constituted an estimated 10 percent of the population, only 23 of the 700 uniformed officers, or 3.3 percent, and only two of the 123 plainclothes officers, or 1.6 percent, were Mexican American. In another large city in California, the Mexican American percentage was 15 percent of the total population. Of this city's 370 uniformed policemen, 14, or 3.8 percent and of its 79 plainclothes investigators, four, or 5 percent, were Mexican American.

A number of inquiries in the questionnaire related to recruitment and selection practices. The first question asked was whether the agencies had established qualifications for appointment. Of the 277 agencies which responded, 274 answered affirmatively. The requirements of only 164 agencies, however, were in printed form and available to the public.

A majority of the responding agencies required that as a condition of employment officers live in the jurisdiction. Of 271 agencies responding to a question regarding minimum educational requirements for initial appointment, 193 required high school graduation. The great majority of agencies stated that applicants were required to take physical, written, and oral examinations.

More than 40 percent of the responses listed failure to pass written examinations as the primary reason for disqualification of Mexican American applicants. Nearly 30 percent listed failure to meet physical requirements,[10] 25 percent reported failure to meet educational requirements, almost 25 percent listed inadequate character references, and about 17 percent men-

[4] Telephone interview with Charles Sierra, Advisor to the Director, Los Angeles Human Relations Bureau, June 4, 1969.

[5] Los Angeles City Personnel Department—Fair Employment Practices Survey, 1967–68.

[6] Telephone interview with Jack Casford, Human Relations Analyst, San Francisco Human Rights Commission, June 4, 1969.

[7] San Francisco has a number of Filipinos and persons from Central and South America, the majority of whom have Spanish surnames. *Id.*

[8] *Hearing before the U.S. Commission on Civil Rights, San Francisco, Calif., May 1–3, 1967, and Oakland, Calif., May 4–6, 1967* at 823.

[9] U.S. Commission on Civil Rights, *For ALL the People . . . By ALL the People,* A Report on Equal Opportunity in State and Local Government Employment, (1969) [hereinafter cited as For ALL The People] at 25.

[10] On Aug. 17, 1968, the Commission's California State Advisory Committee held a meeting on administration of justice problems in Los Angeles. One of the Committee members, Daniel L. Fernandez, questioned city councilman Thomas Bradley about the physical requirements for police recruits

tioned lack of facility with the English language as the primary reason for disqualification.

There were 56 agencies which stated that no Mexican American applicants had applied in the previous 3 years; 157 responded that from 1 to 10 percent of their applicants had been Mexican Americans. These 213 responses constituted almost 80 percent of the 271 responses to this question.[11] The questionnaire asked the agencies for their views as to the reason why relatively few applications had been received from Mexican Americans. Inability to meet the educational requirements was the most frequent response. Of the 271 respondents, 193 indicated that a high school degree was required for police applicants. The second most important factor was the existence of written examinations. The third factor, cited in almost as many responses as the second, was an unfavorable impression of police work by Mexican Americans.

This last factor frequently was cited during the Commission's field investigations. Rev. John Luce and Rev. Charles White stated that Mexican Americans in Los Angeles were reluctant to become policemen for fear of being regarded with disfavor by other Mexican Americans. The main reason for this fear, they said, is that Mexican Americans do not trust the Los Angeles police and are convinced that the police do not trust them. Most of the Mexican American police officers in Los Angeles, they said, are looked upon as "sell-outs" and are often described as having become anglicized in their attitudes and practices.[12]

Similarly, a Spanish surnamed police officer in Denver, referring to the attitude of the Mexican American community toward any Mexican American police applicant, stated: "He is considered to be a defector." [13] The officer's superior, an Anglo division chief, supported this view, saying: "A stigma attaches to a minority individual when he becomes a member of a police department." [14] According to an official of the community action program in Roswell, New Mexico, Mexican American community leaders there are unwilling to furnish names of potential Mexican American applicants to the police chief because the leaders are apprehensive of subsequent criticism and abuse by the Mexican American community.[15]

Community leaders in each of the five States suggested that special efforts must be made to attract qualified Mexican Americans into law enforcement work. A majority of the departments, however, have no recruitment program, much less programs designed to attract Mexican American and other minority applicants. Of the 272 agencies responding to the question as to whether the agency had a recruitment program, 162 stated that they had none, and 177 said they had made no special efforts to recruit Mexican American applicants during the past 2 years.

Queried as to which methods the agency utilized to inform the Mexican American community of its desire to receive applications, 56 out of 141 agencies responding, or 40 percent, indicated that they had made announcements which were distributed by Mexican American community organizations. Only nine agencies, however, indicated that they had arranged for the publication of such information in local Spanish language newspapers; only 16 had made arrangements for such announcements to be broadcast over local Spanish language radio and television stations; and only two had

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and what could be done to make them less restrictive. Councilman Bradley responded:

> . . . the Civil Service Commission establishes the standards but they take directions from the police department. For a long time Chief Parker was unwilling to drop the minimum height from five-ten down to five-nine, and finally down to five-eight. This was a long and agonizing fight that went on. Now, I have not seen that the officers . . . were handicapped by the fact that their height was reduced. There was a time when they have—I've forgotten the exact number of teeth, but the question was asked one time, "What are they going to do, bite people?"

Councilman Bradley further pointed out that at one time the police department required that a recruit have a four-inch chest expansion, and that one almost had to be a good athlete to meet this standard. He concluded his comments on physical requirements by observing, "I think the reduction in the height from five-eight to five-seven would not impair the ability of the officer to do his job. They don't need muscle and massiveness so much as they need tact." Los Angeles T. at 106–08.

[11] Twenty-four responses showed applications from Mexican Americans amounted to between 11 to 25 percent of the total; 12 responses indicated that Mexican American applicants constituted between 26 to 50 percent of the total; 10 responses indicated that the Mexican American applicants constituted between 51 to 75 percent of the total; and 12 responses indicated that more than 75 percent of their applicants were Mexican Americans.

[12] Los Angeles T. at 39. Arthur Garcia of the Police Malpractice Complaint Center of the Los Angeles American Civil Liberties Union, stated that Mexican American police officers are often more brutal than Anglo officers in their treatment of Mexican Americans. Both Luce and White expressed the belief that this is one way in which the Mexican American officer tries to show Anglo officers that he thinks as they do and is not prejudiced in favor of his own people. *Id.* at 61, 71–72.

[13] Staff interview.

[14] Staff interview.

[15] Roswell T. at 157–58.

printed such announcements in Spanish and had had them distributed in the Mexican American communities.

The larger cities have the poorest records. Of the 141 responses, 17 came from cities with populations of 250,000 to 500,000. Of these 17, only one stated that it had made an announcement in a Spanish language newspaper or on a Spanish language radio or television station.[16]

Sheriffs

Twenty-seven of the 32 responses from county sheriffs furnished statistics concerning their law enforcement personnel by ethnic category. Eleven came from Texas, seven from California, four from New Mexico, three from Colorado, and two from Arizona. In these 27 counties the sheriffs and their deputies and other law enforcement personnel totalled 5,251. Of this number 292, or 5.5 percent, were Mexican American.[17]

In several counties in Texas the Mexican American proportion of the deputies in the sheriff's office equaled or exceeded the Mexican American proportion of the county's population. Thirty-seven out of 39 sheriffs' deputies in Webb County [Laredo] Texas—where Mexican Americans constitute 77 percent of the population—and 36 out of 73 in El Paso County [49 percent Mexican American] were Mexican Americans. In both of these counties, the sheriffs also were Mexican Americans. In Bernalillo County, New Mexico—where Albuquerque is located—15 of the 27 sheriff's deputies were Mexican Americans.

These are exceptions to the rule, however. Commission staff members received information that a relatively low number of Mexican Americans were employed as law enforcement personnel by sheriffs in the majority of areas visited.

For example, in both of the two largest cities in Arizona, the sheriffs had only token numbers of Mexican Americans on their staffs.[18] One Mexican American attorney in Texas pointed out that there were few Mexican American deputy sheriffs in many of the counties located in the Rio Grande Valley, where Mexican Americans constitute a significant portion or even a majority of the population.[19]

A Texas county where the population exceeds 22,000, of which Mexican Americans constitute about 25 percent, had no Mexican American deputies on the sheriff's staff, according to a community leader.[20] The sheriff's response to the questionnaire confirmed this statement. A similar situation existed in Reeves County, Texas [population approximately 14,000], where the population is about 50 percent Mexican American. According to a prominent community leader in Pecos, the county seat of Reeves County, there had not been a Mexican American deputy sheriff for many years.[21] Similarly in Culberson County, Texas, where 45 percent of the population is Mexican American, the sheriff had no Mexican Americans on his staff.[22]

State law enforcement agencies

Six State law enforcement agencies responded to the Commission questionnaire—two from California and one from each of the States of Arizona, Colorado, New Mexico, and Texas. The response of the Texas Department of Public safety indicated that 28 of its 1,740 uniformed and plainclothes officers were Mexican Americans—1.6 percent of the total officer force—in sharp contrast to the Mexican American proportion of the State's population [14.8 percent].

Testifying at the Commission's San Antonio hearing, Col. Wilson Speir, director of the Texas Department of Public Safety, reported that there were no Mexican Americans among the 62 Texas Rangers in his department. He said that there were 38 Mexican American patrolmen and two Mexican Americans on the intelligence staff.[23] In response to the Commission's questionnaire, the total number of patrolmen was given as 1,432, of whom only 26 were Mexican Americans—1.8 percent. At the hearing, in response to Commissioner Hector Garcia's ques-

[16] Sixteen of the 141 responses came from cities in the 100,000 to 250,000 population category. Only one response indicated that an announcement had been made in a Spanish newspaper and only three indicated that Spanish radio and television stations had been utilized. Cities in the category of 50,000 to 100,000 population accounted for 18 of the responses; of the 18 agencies only two had made announcements in the local Spanish language newspapers, and only one had used the local Spanish language radio and TV stations.

[17] Unlike police departments, which use the merit system for appointment and promotion, many deputy sheriffs are hired on the basis of political patronage with merit and qualifications considered to be of secondary importance.

[18] Staff interviews with representatives of sheriffs' offices.

[19] Staff interview.

[20] Staff interview.

[21] Staff interview.

[22] Staff interview.

[23] San Antonio Hearing at 717, 726.

tioning, Colonel Speir admitted that he arrived at the figure 38 by classifying uniformed officers serving in the drivers' license service and the motor vehicle inspection service as "patrolmen."

At the hearing Speir testified: "We have had in past years a captain of the Texas Rangers that was a Mexican American, Captain Gonzales, one of the most famous of all Ranger captains, who is now retired after 30 years of service." [24] In response to a question by Commissioner Garcia, himself a Texan, about the spelling of this former Ranger's last name, Speir responded "G-o-n-z-a-u-l-l-e-s." When Commissioner Garcia expressed the view that this man was never considered to be a Mexican American by the statewide Mexican American community, Speir responded that he was considered to be a Mexican American by the Texas Department of Public Safety.[25]

The name of the former Ranger captain actually was spelled "G-o-n-z-a-u-l-l-a-s." [26] In a newspaper account of an interview with Gonzaullas, [which took place the day after the hearing], who had retired in 1951 after 30 years' service with the Texas Rangers, he is reported to have stated that his father was of Spanish-Portuguese descent, that his mother was of German descent, and that he considered himself to be an American. He also was reported to have said that he could never recall a Mexican American holding a high rank in the Texas Rangers during his 30 years service although he did know of one regular Mexican American Ranger.[27]

The California Highway Patrol listed an overall total of 5,010 uniformed officers, including 4,364 State traffic officers. It failed to indicate whether any of these uniformed personnel were Mexican American. Its covering letter accompanying its response stated in part:
"Under State law, race, descent, or ethnic group affiliation has no bearing on securing employment with this Department". Similarly, the California Department of Justice, which returned the Commission's questionnaire unanswered, stated in a letter that it had two law enforcement bureaus within the department—the bureau of criminal identification and investigation with 33 special agents, and the bureau of narcotics enforcement with approximately 100 peace officers. It did not indicate how many were Mexican American, stating only that there were a "substantial number" of Mexican Americans in each of these bureaus.

The Colorado State Patrol response indicated that it had 418 uniformed officers of whom 350 were patrolmen. All of the 12 Mexican Americans were patrolmen and they constituted slightly more than 2.8 percent of the total 418.

The New Mexico State Police response showed 248 law enforcement personnel. Sixty-one of the 229 uniformed officers and 13 of the 19 plainclothesmen were Mexican American. Thus, Mexican Americans constituted 74 of the 248 personnel—or nearly 30 percent of the law enforcement officers in the agency. The statistics from this one agency compare favorably with the 1960 Population Census for New Mexico which indicates that 28.3 percent of its total population is Mexican American.

Summary

Public officials and private citizens, including judges, lawyers, probation officers, all expressed the belief that the fear and distrust which many Mexican Americans feel toward law enforcement agencies could be significantly dispelled by increasing the number of Mexican American law enforcement officers at all levels of authority.

The majority of the law enforcement agencies responding to a Commission questionnaire stated that they had made no special efforts to recruit Mexican American applicants in the past 2 years. Many of these agencies indicated that the prerequisite of a high school degree, the existence of written tests, and the high physical fitness requirements were major deterrents against application by Mexican Americans and the reason why many of those who did apply failed to qualify. While this may, in part, account for the low number of Mexican American applicants, the failure to establish specially designed minority recruitment programs and to utilize Spanish language advertising media such as newspapers, radio, and television to publicize such programs undoubtedly contributes significantly to the fact that so few Mexican Americans apply for police jobs.

[24] *Id.* at 719.
[25] *Id.* at 728.
[26] San Antonio Express & News, Dec. 15, 1968 at 3–A.
[27] *Id.*

Chapter 11

Participation by Mexican Americans in Agencies of Justice

The relative shortage of Mexican American lawyers is reflected in the scarcity of Mexican American judges and prosecutors. In turn this may contribute to the lack of confidence which Mexican Americans have in the judicial system and the administration of the civil and criminal laws. To determine the extent to which Mexican Americans serve as judges in the Federal and State courts of Arizona, California, Colorado, New Mexico, and Texas a Spanish surname check was made, using the Spanish surnamed list of the U.S. Immigration and Naturalization Service of the Department of Justice and the appropriate Federal and State legal directories.[1] While it is possible that there are judges of Mexican ancestry who do not have Spanish surnames, the margin of error would not be great enough to substantially change the stated percentages.

United States district courts

The 1969 Directory of the United States Court Officials [2] lists a total of 59 Federal District judges sitting in the 12 districts of the five States.[3] Of the 59 judges only two are Spanish surnamed—one in California and one in Texas. Both are comparatively new on the Federal bench.

State courts [4]

Of a total of 961 judges serving on State courts in the five States only 32 or 3.0 percent are Spanish surnamed.[5] There are 32 supreme court justices in the five States. Only one of these, the chief justice of New Mexico, is Spanish surnamed.

The five States have a total of 183 judges at the next intermediate or appellate level. Five of these (three in New Mexico and one each in Colorado and Texas) are Spanish surnamed.

At the State court trial level, there are a total of 746 judges; 26 are Spanish surnamed. California has seven, Colorado three, New Mexico 14, Texas two, Arizona none.

The following chart shows the number and location of State court judges by ethnic origin:

State Courts

	Mexican American	Other	Total
Arizona [6]	0	61	61
California [7]	7	430	437
Colorado [8]	4	166	170
New Mexico [9]	18	39	57
Texas [10]	3	233	236
Total	32	929	961

District attorneys and public prosecutors

Because of the importance of the role district attorneys and public prosecutors and their staffs play in the administration of justice, a Commission staff member obtained information, through telephone conferences, regarding the number of Spanish surnamed attorneys employed in these offices in 22 southwestern cities.

Of 590 State district attorneys and public prosecutors and their assistants, in these cities, only 20, or slightly more than 3 percent, are

[1] *1969 Directory of U.S. Court Officials; 1968 Calif. Roster; 1968 Texas Legal Directory; 1968 New Mexico Attorney Roster of the Bench and Bar; Arizona Courts 1969–70* compiled by Sec'y of State, Jan. 1969; and *Court List* furnished by Colorado Bar Ass'n, May 1969.

[2] Published by the Administrative Office of the U.S. Courts, Washington, D.C.

[3] Arizona, Colorado, and New Mexico each comprise one Federal District. California is divided into five districts, and Texas into four.

[4] All of the judges of the State courts of Arizona, California, New Mexico, and Texas are elected for terms of varying length. In Colorado all State court judges are appointed by the Governor of the State. Ariz. const. art. VI §§ 3, 5; Ariz. Rev. Stats. § 12–120.02; Calif. const. art. VI § 26; N. Mex. const. art. IV §§ 4, 12; Tex. const. art. 5 §§ 2, 4, 5, 6, 7, 15; Colo. const. art. VI, §§ 7, 8, 12, 21, 22.

[5] *Id.*

[6] Includes Supreme, Appellate, and Superior Courts.

[7] *Id.*

[8] Includes Supreme, District, County Courts, and Probate Courts.

[9] *Id.*

[10] Includes Supreme, Civil and Criminal Appellate, and District Courts.

Spanish surnamed. Of these 20, there are none in Arizona or Colorado, one in New Mexico, eight in Texas, and 11 in California.

The following chart shows the cities for which information is available and their district attorneys and public prosecutors by ethnic origin:

Attorneys Employed in Offices of District Attorneys and Public Prosecutors

	Mexican American	Other	Total
Arizona:			
Phoenix	0	8	8
Tucson	0	6	6
Yuma	0	1	1
California (counties):			
Alameda	1	58	59
Fresno	1	19	20
Los Angeles	5	291	296
San Diego	2	56	58
San Francisco	1	35	36
Santa Clara	1	46	47
Colorado:			
Colorado Springs	0	15	15
Denver	0	22	22
Pueblo	0	9	9
New Mexico:			
Albuquerque	0	9	9
Las Cruces	0	5	5
Roswell	0	5	5
Santa Fe	1	6	7
Texas:			
Austin	1	10	11
Brownsville	1	1	2
Corpus Christi	1	1	2
El Paso	0	6	6
Houston	0	7	7
San Antonio	5	12	17
Total	20	570	590

Department of Justice

The Federal Government has a long established policy of equal employment opportunity. This policy has undergone a number of recent implementations and at the present time agencies are required to take affirmative action to recruit and promote minority employees. The Commission requested employment statistics from the Department of Justice for the five-State area to determine what progress it had made in recruiting and promoting Mexican Americans.

The Department of Justice statistics include employees of the legal divisions, including U.S. attorneys and U.S. marshals; the Federal Bureau of Investigation; the Bureau of Prisons; the Immigration and Naturalization Service; and the Bureau of Narcotics and Dangerous Drugs. The total number of all Department of Justice employees in the five States as of November 30, 1967 (excluding the Bureau of Narcotics and Dangerous Drugs, which was only transferred from the Department of the Treasury to the Department of Justice on April 8, 1968) was 6,079. Of this total 448, or 7.36 percent, were Mexican American.[11]

In the General Schedule grades, which comprised 5,608 employees, Mexican Americans held 400, or 7.1 percent of the jobs. The overwhelming majority of their positions, however, were found in the lower Grades GS–1 through GS–8. For example, in Grades GS–1 through GS–4, Mexican Americans held 136 of the 823 jobs, or 16.5 percent. In Grades GS–5 through GS–8, they held 219 of the 2,280 jobs, or 9.6 percent. Thus, of the 400 jobs, 355 were concentrated in the lower paying categories.[12]

In Grades GS–9 through GS–11, where junior supervisory and junior executive positions are located, there were 36 Mexican Americans out of 1,437 total employees—only 2.5 percent. In the executive and higher supervisory Grades of GS–12 through GS–18, only nine of 1,068 employees—about one-third of 1 percent—were Mexican American.[13]

[11] Letter from Kenneth J. Stallo, Director of Personnel, U.S. Department of Justice, to Robert Amidon, U.S. Commission on Civil Rights, Mar. 27, 1969 (with attachments).
[12] *Id.*
[13] *Id.*

None of the 53 legal division employees in the five States, occupying Grades GS–12–18—where all the lawyers and other top professionals are found—was Mexican American. Nor were there any Mexican Americans among the 47 Bureau of Prisons employees in these grades.[14]

Mexican Americans constituted only three of the 772 FBI employees in Grades GS–12–18 and only three of the 365 FBI employees in Grades GS–9–11. Of the 1,811 FBI GS classified employees in the five States, only 48—or 2.7 percent—were Mexican Americans.[15]

In the Bureau of Immigration and Naturalization, only 25 of the 856 employees found in Grades 9 through 11—less than 3 percent—and only six of the 196 employees in Grades 12 through 18—slightly more than 3 percent—were Mexican Americans.[16]

The Bureau of Narcotics and Dangerous Drugs was transferred from the Department of the Treasury to the Department of Justice on April 8, 1968, in accordance with President Johnson's Reorganization Plan. The Assistant Director for Administration of this Bureau furnished the Commission with the following employment statistics for the five-State Southwestern region:[17]

State	Total clerks	Spanish surnamed clerks	Total agents	Spanish surnamed agents
Arizona	1	none	2	none
California	25	none	96	6
Colorado	9	none	18	1
New Mexico	1	1	4	none
Texas	15	2	39	3
Totals	51	3	159	10

NOTE.—As these statistics indicate, only about 6 percent of the narcotics agents are Spanish surnamed.

[14] *Id.*
[15] *Id.*
[16] *Id.*

[17] Letter from N. B. Coon, Assistant Director for Administration of the Bureau, to the General Counsel, U.S. Commission on Civil Rights, Mar. 20, 1969.

Conclusion

This report paints a bleak picture of the relationship between Mexican Americans in the Southwest and the agencies which administer justice in those States. The attitude of Mexican Americans toward the institutions responsible for the administration of justice—the police, the courts, and related agencies—is distrustful, fearful, and hostile. Police departments, courts, the law itself are viewed as Anglo institutions in which Mexican Americans have no stake and from which they do not expect fair treatment.

The Commission found that the attitudes of Mexican Americans are based, at least in part, on the actual experience of injustice. Contacts with police represent the most common encounters with the law for the average citizen. There is evidence of police misconduct against Mexican Americans. In the Southwest, as throughout the Nation, remedies for police misconduct are inadequate.

Acts of police misconduct result in mounting suspicion and incite incidents of resistance to officers. These are followed by police retaliation, which results in escalating hostilities.

The jury system is also not free from bias against Mexican Americans. At times, bail is set discriminatorily and inequalities in the availability of counsel lead to other injustices in trial and sentencing. Skilled interpreters, sensitive to the culture and background of Mexican Americans. are rare in areas of the Southwest where Mexican Americans predominate. Finally, Mexican Americans have been excluded from full participation in many of the institutions which administer justice in the Southwest. Mexican Americans are underrepresented in employment in police departments, State prosecutor's offices, courts, and other official agencies. Consequently, these agencies tend to show a lack of knowledge about and understanding of the cultural background of Mexican Americans.

The Commission recognizes that individual law enforcement officers and court officers have made positive efforts to improve the administration of justice in their communities. The fact however, that Mexican Americans see justice being administered unevenly throughout the Southwest tends to weaken their confidence in an otherwise fair system. In addition, the absence of impartial tribunals in which claims of mistreatment can be litigated to a conclusion accepted by all sides tends to breed further distrust and cynicism.

This report is not intended to burden the agencies of justice with responsibilities which lie with society as a whole. The police and the courts cannot resolve the problems of poverty and of alienation which play a large part in the incidence of crime which they attempt to control; and the police and the courts often treat legitimate demands for reform with hostility because society as a whole refuses to see them as justified. The Commission recognizes that the job of law enforcement is extremely difficult. Nevertheless, it finds no justification for illegal or unconstitutional action by the very persons who are responsible for the enforcement of the law.

This report shows that Mexican Americans believe that they are subjected to such treatment again and again because of their ethnic background. Moreover, their complaints bear striking similarities to those of other minority groups which have been documented in earlier Commission studies of the administration of justice. The inequalities suffered by black Americans and Indians described in the Commission's 1961 "Justice" report and its 1965 "Law Enforcement" report, are of a similar nature. Consequently, the Commission's recommendations in this report are designed to be sufficiently broad to be applicable to all minority groups.

The essence of this situation is summed up in the words of a Mexican American participant in the California State Advisory Committee meeting, who said: "I think that my race has contributed to this country with pride, honor, dignity, and we deserve to be treated as citizens today, tomorrow, and every day of our lives. I think it is the duty of our Government to guarantee the equality that we have earned."

Findings

1. Police misconduct

There is evidence of widespread patterns of police misconduct against Mexican Americans in the Southwest. Such patterns include:

(a) incidents of excessive police violence against Mexican Americans;

(b) discriminatory treatment of juveniles by law enforcement officers;

(c) discourtesy toward Mexican Americans;

(d) discriminatory enforcement of motor vehicle ordinances;

(e) excessive use of arrests for "investigation" and of "stop and frisk";

(f) interference with attempts to rehabilitate narcotics addicts (pp. 2–12).

2. Inadequate protection

Complaints also were heard that police protection in Mexican American neighborhoods was inadequate in comparison to that in other neighborhoods (pp. 12–13).

3. Interference with Mexican American organizational efforts

In several instances law enforcement officers interfered with Mexican American organizational efforts aimed at improving the conditions of Mexican Americans in the Southwest (pp. 14–18).

4. Inadequacy of local remedies for police malpractice

Remedies for police malpractice in the Southwest were inadequate:

(a) in most Southwestern cities the only places where individuals can file complaints against the police are the police departments themselves. Internal grievance procedures did not result in adequate remedies for police malpractice;

(b) some cities in the Southwest have established independent or quasi-independent police review boards but these have not provided effective relief to complainants;

(c) civil litigation by Mexican Americans against police officers accused of civil rights violations is infrequent;

(d) there are few instances of successful local prosecutions of police officers for unlawful acts toward Mexican Americans;

(e) there have been instances of retaliation against Mexican Americans who complained about law enforcement officers to the local police department or to the FBI (pp. 20–21).

5. Federal remedies

(a) Agents of the Federal Bureau of Investigation have often failed to interview important witnesses in cases of alleged violation of 18 U.S.C. 242 or interviewed such witnesses in a perfunctory and hostile manner.

(b) More aggressive efforts to implement 18 U.S.C. 242 by the Department of Justice are needed (pp. 28–33).

6. Underrepresentation of Mexican Americans on juries

There is serious and widespread underrepresentation of Mexican Americans on grand and petit State juries in the Southwest:

(a) neither lack of knowledge of the English language nor low-incomes of Mexican Americans can explain the wide disparities between the Mexican American percentage of the population and their representation on juries;

(b) judges or jury commissioners frequently do not make affirmative efforts to obtain a representative cross section of the community for jury service;

(c) the peremptory challenge is used frequently both by prosecutors and defendants' lawyers to remove Mexican Americans from petit jury venires.

The underrepresentation of Mexican Americans on grand and petit juries results in distrust by Mexican Americans of the impartiality of verdicts (pp. 36–46).

7. Bail

Local officials in the Southwest abuse their discretion:

(a) in setting excessive bail to punish Mexican Americans rather than to guarantee their appearance for trial;

(b) in failing to give Mexican American defendants an opportunity to be released until long after they were taken into custody;

(c) by applying unduly rigid standards for release of Mexican Americans on their own recognizance where such release is authorized.

In many parts of the Southwest, Mexican American defendants are hindered in their at-

tempts to gain release from custody before trial because they cannot afford the cost of bail under the traditional bail system (pp. 48–52).

8. Counsel

There are serious gaps in legal representation for Mexican Americans in the Southwest:

(a) the lack of appointed counsel in misdemeanor cases results in serious injustices to indigent Mexican American defendants;

(b) even in felony cases, where counsel must be provided for indigent defendants, there were many complaints that appointed counsel often was inadequate;

(c) where public defender's offices are available to indigent criminal defendants, they frequently did not have enough lawyers or other staff members to adequately represent all their clients, many of whom are Mexican Americans;

(d) in parts of the Southwest there are not enough attorneys to provide legal assistance to indigent Mexican Americans involved in civil matters;

(e) many lawyers in the Southwest will not handle cases for Mexican American plaintiffs or defendants because they are "controversial" or not sufficiently rewarding financially;

(f) despite the enormous need for lawyers fluent in Spanish and willing to handle cases for Mexican American clients, there are very few Mexican American lawyers in the Southwest (pp. 54–59).

9. Attitudes toward the courts

Mexican Americans in the Southwest distrust the courts and think they are insensitive to their background, culture, and language. The alienation of Mexican Americans from the courts and the traditional Anglo-American legal system is particularly pronounced in northern New Mexico (pp. 60–62).

10. Language disability

Many Mexican Americans in the Southwest have a language disability that seriously interferes with their relations with agencies and individuals responsible for the administration of justice:

(a) there are instances where the inability to communicate with police officers has resulted in the unnecessary aggravation of routine situations and has created serious law enforcement problems;

(b) Mexican Americans are disadvantaged in criminal cases because they cannot understand the charges against them nor the proceedings in the courtroom;

(c) in many cases Mexican American plaintiffs or defendants have difficulty communicating with their lawyers, which hampers preparation of their cases;

(d) language disability also adversely affects the relations of some Mexican Americans with probation and parole officers (pp. 66–71).

11. Interpreters

Interpreters are not readily available in many Southwestern courtrooms:

(a) in the lower courts, when interpreters were made available, they are often untrained and unqualified;

(b) in the higher courts, where qualified interpreters were more readily available, there has been criticism of the standards of their selection and training and skills (pp. 71–74).

12. Employment by law enforcement agencies

Employment of Mexican Americans by law enforcement agencies throughout the five Southwestern States does not reflect the population patterns of these areas:

(a) neither police departments, sheriffs' offices, nor State law enforcement agencies employ Mexican Americans in significant numbers;

(b) State and local law enforcement agencies in the Southwest do not have programs of affirmative recruitment which would attract more Mexican American employees;

(c) failure to employ more Mexican Americans creates problems in law enforcement, including problems in police-community relations (pp. 78–83).

13. Courts and prosecutors

Other agencies in charge of the administration of justice—courts, district attorneys' offices, and the Department of Justice—also have significantly fewer Mexican American employees than the proportion of Mexican Americans in the general population (pp. 84–86).

RECOMMENDATIONS
LAW ENFORCEMENT

Recommendation 1—Federal Civil Actions

The Commission recommends that Congress enact legislation authorizing civil actions by the Attorney General against law enforcement officers and agencies to enjoin patterns of discriminatory treatment as well as interference with lawful organizational efforts of minorities in furtherance of their civil rights.

Justification

There is at present no authority in the Department of Justice to deal with patterns of police misconduct. The criminal statutes designed to prevent violations of citizens' rights by State and local officers acting under color of law, 18 U.S.C. 241 and 242, only apply to individual acts of misconduct or to conspiracies to commit such acts. The Department receives many complaints of violations of individual rights, such as unlawful arrest, unreasonable detention for investigation, or the excessive use of force which may not warrant prosecution or show the existence of a conspiracy, but which do show a pattern of police misconduct. In these cases, if the local law enforcement agencies do not take steps to prevent the recurrence of such practices, the authority proposed herein would enable the Attorney General to remedy this situation.

Systematic patterns of discriminatory police action have been the basis for lawsuits by individual plaintiffs as members of a class. In *Lankford v. Gelston*, 364 F. 2d 197 (4th Cir. 1966), the Fourth Circuit held that the Civil Rights Act of 1866 (42 U.S.C. 1983) authorized an injunction against the police commissioner of Baltimore, forbidding the continuation or repetition of widespread warrantless searches of Negro homes on the basis of unverified anonymous tips. Several current suits involve similar complaints. *Kidd v. Addonizio*, D.C.N.J. No. 899–68 July 1967; *Robinson v. Los Angeles Police Department*, D.C. Cal. Civ. No. 68–1763–R Nov. 1968 and *Figueroa v. County of Riverside*, CA 9th Cir. No. 23931, June 1969. Since these complaints allege denials of equal protection of the laws under the 14th amendment, the Attorney General may have power to intervene in these suits under Title IX of the Civil Rights Act of 1964, which permits such intervention in cases of "general public importance." This power, however, does not negate the need for independent authority in the Department of Justice to initiate such law suits. Authorizing the Attorney General to sue would make the resources of the Department of Justice, which are superior to those of individual plaintiffs (especially in respect to investigation of departmental policies of law enforcement agencies), available at a much earlier stage. In addition, the Attorney General is informed concerning patterns or practices of discrimination through complaints filed with the Department and can make a more informed judgment than an individual on where to initiate such actions. Congress similarly recognized the limitations of private litigants to deal with discriminatory patterns in the areas of public accommodations, employment, and housing by empowering the Attorney General in the Civil Rights Acts of 1964 and 1968 to bring suits on his own initiative.

Recommendation 2—Municipal Liability

The Commission recommends that Congress amend 42 U.S.C. § 1983, which provides Federal civil remedies for police malpractice, to make the governmental bodies who employ officers jointly liable with those officers who deprive persons of their civil rights.

Justification

This recommendation was made in the 1961 and 1965 Commission reports dealing with justice and law enforcement. It seeks to assure the victim in a police misconduct case as adequate Federal remedy against a defendant (the city or county) who has the money to pay a judgment for damages (as individual officers often do not), who, like other employers, bears some responsibility for the actions of persons he has employed, and who is in a position to take corrective action to prevent further violations of the kind complained of. At present, although a Federal court may issue an injunction against governmental bodies under § 1983, no liability in damages exists. *Monroe* v. *Pape*, 365 U.S. 167 (1961).

It has been argued that public entities are liable for police malpractice under 42 U.S.C. § 1983 to the same extent that they would be liable under State law, *Figueroa* v. *County of*

Riverside (supra) but this position has not been generally adopted by the courts. In any event although the principle that governmental bodies should be liable for the torts of their employees has gained increased adherence in recent years,[1] immunity under State law is still quite prevalent and, where governmental liability for police misconduct exists, it varies in kind and extent.

Federal power to enforce the equal protection clause of the 14th amendment would appear sufficiently broad to reach governmental bodies. The Supreme Court has held that Congress may use any rational means to protect citizens from denials of equal protection. *South Carolina v. Katzenbach*, 383 U.S. 301 (1966), *Katzenbach v. Morgan*, 384 U.S. 641 (1966). This proposal would not only give citizens an effective remedy against denials by individual governmental officials, but it might have the effect of inducing governmental entities to take steps to prevent such violations.

Several State bar associations have recommended that States and municipalities may be induced to take such steps in exchange for a relaxation of the rule excluding illegally obtained evidence from criminal proceedings. The purpose of the exclusionary rule is to curb one variety of illegal police action, namely unconstitutional searches and seizures, *Mapp v. Ohio*, 367 U.S. 643 (1961). The New York County Lawyers Association and the Federal Bar Associations of New York, New Jersey, and Connecticut have suggested that where municipalities assume liability for police malpractice and establish effective procedures for redress of violations, important evidence obtained illegally but in good faith may be admissible in criminal prosecutions under careful safeguards. *Hearings of the Sub. on Criminal Laws and Procedures, Senate Committee on the Judiciary*, 91st Cong., 1st Sess., at 225 to 227 (1969); 3 Criminal Law Bulletin 630 (1967).

[1] McQuillan, *Municipal Corporations*, Vol. 18, 53, 2da. The Federal Government is liable for many torts of its agents under the Federal Tort Claims Act of 1948, 28 U.S.C. 2671 *et seq.* Eight States—Idaho, Illinois, Indiana, Kentucky, Minnesota, Ohio, Oregon, and Pennsylvania—have enacted statutes relating specifically to police activities which waive to some extent municipal immunity in this area. McQuillan, Vol. 18, 53, 79d. Of the five Southwestern States involved in this study, Texas and Arizona have not waived governmental immunity for torts. California has made public entities liable on a respondeat superior basis in those cases in which their employees are liable. Cal. Gov. Code §§ 815, 815.2 (West 1966). In Colorado, public entities are authorized to insure their employees and agents against liability although immunity of the entity is not waived. Colo. Rev. Stats. § 72–16–2 (1963). New Mexico has a similar insurance statute, which provides that the employing public entity shall be liable for torts to the extent that it is covered by insurance. N. Mex. Stats. Ann. § 5–6–20. (1953).

Recommendation 3—Improved Federal Investigations

The Commission recommends that the Department of Justice review and revise its procedures for ascertaining whether there have been violations of 18 U.S.C. 241, 18 U.S.C. 242, and Title I of the Civil Rights Act of 1968, the statutes which impose criminal penalties for misconduct of police officers toward citizens. Such measures should include:

(a) the requirements of a full, rather than merely a preliminary investigation, by the Federal Bureau of Investigation in a higher percentage of cases before a decision is made that a complaint lacks prosecutive merit;

(b) increased supervision of the Bureau's investigative practices, including more frequent reinvestigation of complaints by the Department's attorneys.

Justification

In its 1961 *Justice* Report, the Commission discussed the need for a more vigorous policy of investigating and prosecuting violations of 18 U.S.C. 241 and 242. In 1965, the Commission noted some improvement but also noted that the number of prosecutions was still very low. U.S. Commission on Civil Rights *Justice* at 67; U.S. Commission on Civil Rights, *Law Enforcement* (1965) at 117. In the Southwest, the criticisms and suggestions of the Commission to the Department of Justice in 1961 and 1967 are still applicable. These recommendations follow Commission views expressed in those reports:

(a) a large number of cases are closed by the Department of Justice because of inadequate evidence in support of the plaintiff's complaint. Often, however, this inadequacy results from insufficient investigation of the complaint. In many cases, a full investigation could result in corroboration of the victim's allegations;

(b) the adequacy of the FBI's search for witnesses and general investigative practices can only be ascertained by more frequent reinvestigation by the attorneys of the Department of Justice.

Recommendation 4—Federal Enforcement Program

The Commission recommends that the Civil Rights Division increase the manpower available for prosecuting violations of 18 U.S.C. 241 and 242 by law enforcement officials, including:

(a) the hiring of a number of criminal lawyers specializing in prosecution and

(b) the establishment of a unit of independent investigators.

Justification

(a) In 1961, the Commission criticized the Department of Justice for not assigning sufficient priority to enforcement of 18 U.S.C. 241 and 242 (see n. 3, p. iv). Additional manpower was suggested. At present, although the Civil Rights Division is much larger than it was in 1961 [its authorized strength in the fall of 1969 was 117 attorneys] it has not assigned sufficient manpower for an effective, continuous program to enforce the statutes and to reinvestigate many complaints or to initiate investigations. In addition, until now few of the Division's lawyers have had specialized experience in criminal prosecutions. As a result, areas such as law enforcement in the Southwest have been comparatively neglected.

Under the September 24, 1969 reorganization of the Division, for the first time 15 attorneys and two research analysts have been assigned to the new Criminal Section with full-time responsibility to enforce a number of Federal criminal civil rights statutes, including 18 U.S.C. 242. Between 1964 and 1968, the Civil Rights Division received approximately 1,600 complaints of police brutality each year. Unless the complaint load decreases, it will be extremely difficult for 15 attorneys to implement a vigorous enforcement program.

(b) A recommendation for the establishment within the FBI of a special unit of investigators trained in civil rights work was made by the President's Committee on Civil Rights [the Truman Committee] in 1947 in its report "To Secure These Rights." The Commission's recommendation is a variation on that recommendation. A special unit is required because of the inadequacies which now exist in the investigation of civil rights complaints and the absence of manpower to reinvestigate many complaints. Enforcement of the criminal statutes in this area can only be as effective as the investigations conducted under them. However, the 1947 Committee's recommendation did not go far enough. The investigators should be directly responsible to the office in charge of enforcing the statutes. They may be detailed from within the FBI or hired from outside sources.

Recommendation 5—State Remedies

The Commission recommends that States take steps to control and lessen the injuries to individual rights created by police abuse of authority. Such steps should include administrative procedures for rapid and adequate compensation of claims for injuries suffered through police malpractices.

Justification

States share with the Federal Government responsibility for providing equal protection of the laws to their citizens. Administrative compensation for malpractice claims is suggested because a complaint to the police department or to a police review board can only result in disciplinary action against an officer, which does not compensate the victims of police misconduct for medical expenses, pain, suffering, and other damages. Liability of municipalities under 42 U.S.C. 1983 (recommended above) is a somewhat similar remedy to this but more difficult and expensive for an individual to obtain. The State remedy would be in addition to the Federal remedy, although a victim could not recover twice for the same injuries.

Recommendation 6—Local remedies

The Commission recommends that internal complaint procedures of police departments be handled by independent agencies or boards within the departments with an independent investigative staff and the power to recommend appropriate disciplinary action against officers guilty of misconduct. A complainant should have a right to be present at the hearings of such agencies or boards and be represented by counsel who may cross-examine witnesses.

Justification

Similar recommendations were made by the President's Commission on Law Enforcement and the Administration of Justice (the Crime Commission) and endorsed by the National

Advisory Commission on Civil Disorders (the Kerner Commission).

The Crime Commission emphasized the need for adequate procedures for full and fair processing of citizen grievances. The same Commission's Task Force on the Police stated that police investigative procedures and hearing procedures needed substantial improvement to achieve fairness to all parties. More recently, the Kerner Commission specifically recommended independent investigations and complaint participation in hearings.

JURIES

Recommendation 1—Federal legislation relating to State juries

The Commission recommends that Congress enact legislation to insure that no person be excluded from service as a grand or petit juror on State juries on account of race, color, religion, sex, national origin, or economic status. This statute should require the revision of State jury selection systems, substituting random selection of jurors on the basis of objective and comprehensive lists, such as voter registration lists or actual voting lists, for keyman systems or other systems vesting undue discretion in judges, jury commissioners, or clerks. The Federal statute should also:

(a) require State courts to keep records of jury selection by race and major ethnic categories, including Spanish surname. Such records also should include the race and major ethnic category of jurors peremptorily challenged;

(b) require State courts, where representative panels result in an unrepresentative jury because members of a group are eliminated by English language disability, to call a proportionately larger number of persons from that group as veniremen, to insure a fair chance of a representative jury;

(c) require the State to increase the pay of jurors and shorten the terms of grand juries, to facilitate service by poor people.

Justification

The Commission's findings indicate that the same rationale which led to the adoption of legislation requiring random selection for Federal juries is applicable to State juries: discrimination in selection can only be avoided by eliminating the bias inherent in the keyman system of selection and the substitution therefore of a system of random selection. Federal power to guarantee nondiscrimination in juries, under the 14th amendment, is broad enough to allow Congress to fashion any rational means to remedy discrimination including changes in the States' methods of selection of jurors (*South Carolina v. Katzenbach*, 383 U.S. 301 (1966); *Katzenbach v. Morgan*, 384 U.S. 641, (1966)).

(a) the recordkeeping requirement is necessary to insure enforcement of the law's basic purpose, to insure representative juries. It is particularly important to keep records of the use of the peremptory challenge by race or other census category because it is not possible to prove the discriminatory use of the challenge without such records;

(b) the proposal to call a proportionately higher number of Mexican American veniremen would go into effect in those counties in which even under random selection a disproportionate number of Mexican Americans are disqualified from jury service by their inability to meet the English language requirement. Affirmative efforts to select representative juries, which take into account the race of veniremen, have been upheld in court decisions. (See *Brooks v. Beto*, 366 F.2d 1 (5th Cir. 1966), *cert. den.*, 386 U.S. 975 (1967); *Rabinowitz v. U.S.* 366 F.2d 34 (1966));

(c) the proposal to increase jury pay is based on the theory that to set jury pay levels so low as to make it practically impossible for poor people to serve on juries without considerable financial hardship results in juries which are not representative of all elements of the community. The proposal to shorten terms is based on the fact that some States, for example, California, require grand jurors to sit for a whole year. Poor people cannot afford to serve for such long periods of time at low pay.

BAIL

Recommendation 1—Bail reform

The Commission recommends that the States should enact bail reform legislation designed to ensure that indigent defendants will not be unfairly detained in jail until trial because they are unable to afford the traditional cash bail.

Justification

The traditional bail system, which requires a defendant to make a cash deposit or bond before he can be released, unfairly discriminates against those defendants who are too poor to meet such financial conditions. As a result, many indigent defendants who probably would appear for trial remain in jail until trial while other defendants charged with similar crimes go free because they can afford bail. In addition, defendants who cannot afford bail and remain in jail until they are tried are hampered in their efforts to prepare for trial and their family lives and employment are unnecessarily disrupted.

The President's Commission on Law Enforcement and Administration of Justice recommended that the States enact bail reform legislation patterned after the Federal Bail Reform Act of 1966.[2] That act requires that every person charged with a noncapital offense must be released on his personal recognizance unless a judicial officer determines, upon showing of good cause, that the release will not assure the appearance of the accused for trial.

In order to ensure reform of their bail practices, the States will need personnel to evaluate defendants' eligibility for release, and to supervise them after their release. Funds for such programs are available from the Law Enforcement Assistance Administration of the Department of Justice (LEAA).[3]

Recommendation 2—Prompt proceedings

All persons should be brought before a judicial officer to be charged and given an opportunity to seek release on bail or on their own recognizance without unnecessary delay.

Justification

In some communities criminal defendants are held for periods of time ranging from a few hours to several days before being charged or given an opportunity to seek release on bail or on their own recognizance. Each arrested person should have an opportunity to secure his release from custody without unnecessary delay in order to avoid disruption of his life and the life of his family and to prevent improper detention. The Federal rule requires judicial presentation "without unnecessary delay" [4], and has been interpreted as ordinarily requiring production of the accused in less than 24 hours.[5] According to the President's Crime Commission it is the practice in 29 States as well.[6] The ultimate responsibility for determining what is "unnecessary delay" must remain with the courts and will be determined in the light of all the facts and circumstances of each case.

REPRESENTATION BY COUNSEL

Recommendation 1—Legal Assistance

Legal assistance should be made available to every indigent defendant immediately after his arrest in all criminal cases arising in State and local courts regardless of the nature of the charge.

In order to implement this recommendation, the State should establish statewide systems of legal representation for defendants in all criminal cases.

Justification

Serious injustices arise in the lower courts because of the lack of adequate legal representation for indigents. It has been recognized by most people familiar with the administration of criminal justice, including the Supreme Court of the United States, *Powell* v. *Alabama*, 287 U.S. 45 (1932), *Gideon* v. *Wainwright*, 372 U.S. 335 (1963), that representation by counsel is a necessary part of a fair trial in serious criminal cases. Yet, the consequences of even minor fines or short sentences can be extremely serious, too, and disproportionately so for indigent defendants and their families. For these reasons the States should provide adequate counsel for all indigent defendants, no matter what the offense with which they are charged.

The legal assistance to be provided by the States should be available immediately after the

[2] President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society*, at 132 (1967).

[3] U.S. Department of Justice, Law Enforcement Assistance Administration, *Guide for State Planning Agency Grants* (1968) at 2 (hereinafter cited as SPA Guide). For the text of the act under which such grants are made, see Appendix A.

[4] Fed. R. Crim. Pro., 5(b).

[5] *Mallory* v. *United States*, 354 U.S. 449 (1957).

[6] President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts* 84 (1967).

defendant's arrest to ensure that he is given an opportunity to be released on bail or on his own recognizance and to protect his rights through other early, but critical, stages of the judicial process.

The initial responsibility for the establishment of programs of adequate legal representation rests with the States. California, for example, provides counsel to all indigent criminal defendants who request such assistance, either through the public defender's office or by assigned counsel. Federal funds are currently available from LEAA for such programs.[7] State planning agencies should include such programs in their requests. In Fiscal Year 1969 only a small amount of the approximately $25 million distributed by LEAA was designated for use in a few States in programs to provide indigent defendants with legal assistance.

Some of the States might have an initial problem providing legal assistance to all indigent criminal defendants because of manpower shortages. The Commission suggests that States and localities consider, among other possible sources of manpower, using law students under proper supervision to assist in representing defendants in lower courts. This has already been done in some communities. The Boston University Roxbury Defender Project provided legal representation by third year law students for indigent defendants in misdemeanor cases under faculty supervision. A similar project has been underway at Harvard University Law School.[8]

The American Bar Association, the Urban Coalition, and other groups concerned about the quality of legal services for indigents are urged to continue their efforts to see that such assistance is provided wherever it is necessary.

Recommendation 2—Legal Services Programs

Congress should amend the Economic Opportunity Act of 1964 to repeal the provision which prohibits Legal Services Programs (LSP) funded by the Office of Economic Opportunity (OEO) from representing defendants in criminal cases.

[7] SPA guide at 2.

[8] President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts* (1967) at 62.

Justification

A possible source of legal manpower to represent criminal defendants is the OEO Legal Services Program. Under existing legislation, however, these lawyers are barred from representing anyone indicted (or proceeded against by information) for the commission of a crime, except in extraordinary circumstances where the Director of the Office of Economic Opportunity has determined that adequate legal assistance will not be available for an indigent defendant unless such services are made available.[9]

Recommendation 3—Training programs for Mexican American lawyers

Congress should substantially increase the funds available to the Office of Economic Opportunity (OEO) for programs designed to help law schools recruit and train Mexican American law students.

Justification

There is a severe shortage in the Southwest of Mexican American and, generally, Spanish-speaking lawyers. Currently there are some programs, both publicly and privately financed, designed to recruit and train minority group lawyers, including Mexican Americans. The Council on Legal Education Opportunity (CLEO) has received grants of $493,530 from the Office of Economic Opportunity and a Ford Foundation grant of $450,000. The Mexican American Legal Defense Fund also gives law scholarships. However, if the gap between the actual number of Mexican American lawyers and the number needed is to be closed these programs will have to be substantially increased.

LANGUAGE DISABILITY AND INEQUALITY BEFORE THE LAW

Recommendation 1—Interpreters

The States in the Southwest should establish programs for the recruitment, training, and employment of court interpreters to be used in areas where there are large concentrations of Mexican Americans.

Justification

A serious problem in the Southwest is the absence of qualified interpreters in courtrooms

[9] 42 U.S.C. 2809(a)(3).

handling large numbers of Mexican Americans who have difficulty communicating in the English language. A minimum of fairness requires that all persons concerned be able to understand what is being said. In some communities, however, the courts do not have interpreters or merely rely on untrained citizens or on regular court or law enforcement personnel to act as official interpreters. Comparable problems arise in other parts of the United States for primarily Spanish-speaking Puerto Ricans and Cubans. In areas with large concentrations of such groups similar steps should be taken to overcome the problems of language disability.

Federal funds for the recruitment, training and employment of court interpreters are available from LEAA.[10]

Recommendation 2—Bilingual personnel

(a) State and local governments in the Southwest should establish programs for training in conversational Spanish for those individuals responsible for the administration of justice in areas of the Southwest where there are large concentrations of Mexican Americans.

(b) Bilingual capability in Spanish and English should be recognized by Federal, State, and local agencies responsible for the administration of justice as a special qualification for employment in areas of the Southwest where there are large concentrations of Mexican Americans.

Justification

Many Mexican Americans in the Southwest have difficulty with English and are most comfortable using Spanish, while most law enforcement officers and court officials do not speak Spanish. This fact has led to misunderstanding and has sometimes resulted in injustices to Mexican Americans. Justice cannot be administered fairly or effectively if the officials responsible for its administration cannot communicate with a substantial segment of the community. Law enforcement officers, probation and parole officers, judges, and other officials responsible for the administration of justice in the Southwest should be trained in conversational Spanish in order to help bridge this gap.

Federal funds for the training of personnel in conversational Spanish are currently available from LEAA.[11]

[10] SPA guide at 2.
[11] *Id.*

Another step that can be taken to improve communication between Mexican Americans and agencies administering justice is the employment of bilingual personnel. In order to attract such personnel it is necessary to recognize that their bilingual capabilities are a unique advantage that makes them particularly well qualified for the job. Special steps must be taken to attract them to these positions. This can be done through a variety of methods such as incentive pay, employment bonuses, or other programs that recognize their special qualification.

PARTICIPATION

Recommendation 1—Affirmative recruitment program

The Commission recommends that State and local law enforcement agencies establish:

(a) affirmative recruitment programs specially designed to increase the number of Mexican American law enforcement personnel;

(b) training programs to increase the ability of Mexican Americans and other minority persons employed by law enforcement agencies to obtain promotions to supervisory positions.

Justification

Additional Mexican American officers can contribute significantly in reducing the present feeling of apprehension and distrust which generally pervades the Mexican American community toward law enforcement agencies. Such officers often can serve as on-the-spot interpreters and thus ease tense situations even, in some instances, preventing miscarriages of justice which result from misunderstandings.

In the report of the Kerner Commission a reference is made to the Crime Commission Police Task Force's finding that Negro policemen help provide insight into ghetto problems; often can provide advance information in anticipation of tensions and grievances that might lead to disorders; and are particularly effective in bringing disorders under control once they do break out.[12] The Kerner Commission's report continued by pointing out that more Negro police officers were needed at all levels and ranks,

[12] Report of the Advisory Commission on Civil Disorders at 165.

and recommended that police departments intensify their efforts to recruit more Negroes, review their promotion policies to ensure that Negro officers are afforded equitable promotion opportunities, and ascertain that Negro officers are assigned on a fully integrated basis visible to the Negro community.[13] These findings and recommendations by the Kerner Commission support the Commission's recommendation for efforts to increase the number of Mexican American law enforcement officers at all levels of authority. In its recent report on State and local employment, the Commission discussed in detail the component elements of a successful affirmative action program. That discussion may be useful to agencies seeking to implement this recommendation.[14]

We recognize that in some cases police departments will have difficulty recruiting members of minority groups. The recent report of the Commission on equal employment opportunity in State and local government, indicated that . . . "The tension, suspicion, and hostility which exists between the Negro community and the police department are obstacles to the recruitment of black policemen." [15]

Nevertheless, those departments that have made an effort to reverse their image in the minority communities and who have used special recruiting efforts designed to attract minority applicants have had a degree of success.[16] The Commission believes that similar efforts especially designed to attract Mexican American applicants will have a similar effect in increasing the number of Mexican American law enforcement personnel.

Recruitment of more Mexican Americans by law enforcement agencies would not affect the agencies' policies unless Mexican Americans also have opportunities to be promoted to supervisory positions. If they are not qualified for promotion because of lack of education or training, agencies should provide them with opportunities to make up for such deficiencies. Such programs should offer training both to recruits and to present law enforcement officers desirous of advancing to supervisory positions. Federal funds under LEAA are available for this purpose.[17]

Recommendation 2—Qualifications

Law enforcement agencies should review their qualifications for appointment and eliminate those which may not be job-related and which may tend to discriminate against Mexican American applicants.

Justification

Both Federal and private industry officials have informed the Commission in the past that many job requirements have little or no relationship to the actual work to be performed. For example, many private companies have abolished some of their application requirements, since they have determined that they had little or no bearing on actual job performance. Rather, the majority of the job requirements of new employees was readily attainable through on-the-job training. If such techniques can be utilized to train semi-skilled and skilled technicians, the Commission believes that similar techniques can be developed and employed to properly train Mexican American law enforcement applicants.

In its report *For ALL the People*, the Commission on Civil Rights has pointed out the difficulty that many police applicants encounter in taking lengthy written intelligence tests. Furthermore, the validity of such tests has not been proven and at least one police department in a major city—Detroit—is now using a general intelligence test, which takes only 12 minutes to complete, in contrast to the former 2½ hour intelligence test.[18]

Age, weight, height and vision requirements are invariably more stringent for police applicants than elsewhere in State or local government employment. However, when police departments have made special efforts to recruit minorities they have seen fit to make many of these requirements more flexible. For example, in an effort to recruit more Negro officers, Detroit has recently liberalized its age, height, and vision requirements.[19] Other large cities

[13] *Id.* at 166.
[14] For ALL The People at 121–23.
[15] *Id.* at 72.
[16] *Id.* at 72–73.

[17] Section 301(b) and 406(b) of the Omnibus Crime Control and Safe Streets Act of 1968.
[18] For ALL the People at 74.
[19] *Id.* at 75.

have reduced their height requirement from 5′9″ to 5′7″, in response to pressure from their Spanish-speaking communities.[20]

The elimination of lengthy written tests and the substitution of shorter, more meaningful job-related tests, together with the relaxation of certain physical qualifications, can result in the ultimate hiring of greater numbers of Mexican American applicants.

Recommendation 3—Judges

The President of the United States and the Governors of the five Southwestern States of Arizona, California, Colorado, New Mexico, and Texas should use their powers to appoint qualified Mexican American attorneys to the Federal and State courts.

Justification

The Commission is aware that, with the exception of Colorado, virtually all of the State judges and justices are elected. However, deaths, resignations, and retirements do afford Governors some opportunity for judicial appointments, and the Commission urges them to use their appointive powers to increase the number of Mexican American judges.

Recommendation 4—Department of Justice

The Department of Justice, including the Federal Bureau of Investigation, should take affirmative action under its continuing equal employment opportunity program both to hire additional Mexican Americans in the Southwest and particularly to train and promote their present Southwestern Mexican American employees into supervisory and professional level positions. The Civil Service Commission should review and evaluate the equal employment opportunity of the Department of Justice to ensure that this program will:

> . . . provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; . . .[21]

Justification

The employment statistics furnished the Commission on Civil Rights by the Department of Justice clearly show the disparity that exists in the middle and higher grade categories, which include supervisors, lawyers, and other professional personnel. Virtually no Spanish surnamed employees are found in any of these categories.

Robert E. Hampton, Chairman of the United States Civil Service Commission, stated on August 8, 1969:

> Despite significant gains in overall employment of minority group persons in the Federal service, too many of our minority employees are concentrated at the lower grade levels, victims of inadequate education and discrimination. . . .

On this same date, August 8, 1969, President Nixon issued Executive Order 11478, which restated the long standing Federal Government policy of equal employment opportunity, pointing out that each department and agency had the duty and responsibility of establishing and maintaining affirmative action programs designed to achieve the goals of equal employment opportunity. In this same Executive order, the President ordered the Civil Service Commission to provide leadership and guidance in the operations of such programs, and to review and evaluate such programs periodically to determine their effectiveness.

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[20] *Id.* at 76.

[21] Sec. 2, E.O. 11478, Aug. 8, 1969.

APPENDICES

A. Law Enforcement Assistance Administration

B. A Study of Grand Jury Service by Persons of Spanish Surnames and by Indians in Selected California Counties

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APPENDIX A

Title I of the Omnibus Crime Control and Safe Streets Act of 1968, authorizes the establishment of a three-member Law Enforcement Assistance Administration (LEAA) within the Department of Justice, under the general authority of the Attorney General, to administer grant programs to States and units of local government to strengthen and improve law enforcement. This act superseded the Law Enforcement Assistance Act of 1965 which expended a modest $19 million over a 3-year period for pilot projects related to crime control.

Subchapter II of Title I authorizes LEAA to make grants to the States for the establishment and operation of State law enforcement planning agencies to prepare, develop, and revise comprehensive law enforcement plans. A total of $19 million was given to the States for planning grants in FY 1969; $100,000 to each State with the remainder allocated among the States according to their relative populations.

Subchapter III of Title I authorizes LEAA to make grants "to encourage States and units of general local government to carry out programs and projects to improve and strengthen law enforcement" (Sec. 303 (a)). Grants are available to the States that have comprehensive State plans approved by LEAA for the purposes of public protection, including the improvement and strengthening of law enforcement; recruitment and training of law enforcement personnel, public education relating to crime prevention, construction of buildings to implement the purposes of the act; organization, education, and training of special law enforcement units to combat organized crime; organization, education, and training of regular law enforcement officers for the prevention, detection and control of riots, including the acquisition of riot control equipment; and the recruiting, organization, training and education of community service officers.

Law enforcement is broadly defined in Sec. 3781(a) of the act to include "all activities pertaining to crime prevention or reduction and enforcement of the criminal law." According to LEAA's Guide for State Planning Agency Grants issued in November 1968 the scope of the program coverage encompasses all aspects of the law enforcement system—police, courts, and corrections, as well as general programs for crime prevention and citizen action. The Guide states that the program covers "the prevention, detection and investigation of crime, the apprehension of offenders, the prosecution and defense of criminal cases, the trial, conviction and sentencing of defendants, and the correction and rehabilitation of convicted persons, including imprisonment, probation, parole, and treatment." (p. 2) Thus, grants under Subchapter III are available for all aspects of the administration of justice.

Approximately $24.65 million was allocated among the States according to their respective populations for action grants in FY 1969. An additional $4.35 million was distributed on a discretionary basis by LEAA.

Subchapter IV of Title I provides for the establishment of a National Institute of Law Enforcement and Criminal Justice in order to encourage research and development to improve and strengthen law enforcement. This subchapter also authorizes the FBI to establish law enforcement training programs, and it authorizes LEAA to carry out programs of academic educational assistance to improve and strengthen law enforcement. Approximately $3 million was given to various individuals and organizations by the National Institute in FY 1969; $3 million was spent on the expansion of the F.B.I. training; and $6.5 million was spent on academic assistance.

For Fiscal Year 1969 the Law Enforcement Assistance Administration was given an appropriation totaling $63 million for grants, contracts, loans, and other law enforcement assistance, as well as for departmental salaries and other expenses. For FY 1970 the Department of Justice has received from Congress an appropriation of $268 million to carry out the activities of the Law Enforcement Assistance Administration.

Chapter 46.—LAW ENFORCEMENT ASSISTANCE

[New]

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Sec.
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GENERAL PROVISIONS

§ 3701. Congressional findings, declarations of policy, and statement of purpose.

Congress finds that the high incidence of crime in the United States threatens the peace, security, and general welfare of the Nation and its citizens. To prevent crime and to insure the greater safety of the people, law enforcement efforts must be better coordinated, intensified, and made more effective at all levels of government.

Congress finds further that crime is essentially a local problem that must be dealt with by State and local governments if it is to be controlled effectively.

It is therefore the declared policy of the Congress to assist State and local governments in strengthening and improving law enforcement at every level by national assistance. It is the purpose of this chapter to (1) encourage States and units of general local government to prepare and adopt comprehensive plans based upon their evaluation of State and local problems of law enforcement; (2) authorize grants to States and units of local government in order to improve and strengthen law enforcement; and (3) encourage research and development directed toward the improvement of law enforcement and the development of new methods for the prevention and reduction of crime and the detection and apprehension of criminals. (Pub. L. 90–351, title 1, § 100, June 19, 1968, 82 Stat. 197.)

SHORT TITLE

Section 1 of Pub. L. 90–351 provided: "That this Act [which enacted this chapter, sections 5315(90), 5316(126), and 7313 of Title 5, sections 921–928 (chapter 44), 2510–2520 (chapter 119), 3103a, 3501, and 3502 of Title 18 and Appendix to such Title 18, amended section 3334(a) of this title, section 3731 of Title 18, and section 605 of Title 47, repealed sections 901–910 of Title 15, enacted provisions set out as notes under sections 7313 of Title 5, 921 and 2510 of Title 18, and 532 of Title 28, and repealed provisions set out as a note preceding section 3001 of Title 18] may be cited as the 'Omnibus Crime Control and Safe Streets Act of 1968'."

SEPARABILITY OF PROVISIONS

Section 1601 of Pub. L. 90–351, provided that: "If the provisions of any part of this Act [see Short Title note under this section] or any amendments made thereby or the application thereof to any person or circumstances be held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby."

SUBCHAPTER I.—LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

§ 3711. Law Enforcement Assistance Administration.

(a) Establishment; general authority of Attorney General over Administration.

There is hereby established within the Department of Justice, under the general authority of the Attorney General, a Law Enforcement Assistance Administration (hereafter referred to in this chapter as "Administration").

(b) Membership; appointment; political representation; qualifications.

The Administration shall be composed of an Administrator of Law Enforcement Assistance and two Associate Administrators of Law Enforcement Assistance, who shall be appointed by the President, by and with the advice and consent of the Senate. No more than two members of the Administration shall be of the same political party, and members shall be appointed with due regard to their fitness, knowledge, and experience to perform the functions, powers, and duties vested in the Administration by this chapter.

(c) Functions, powers, and duties of Administration.

It shall be the duty of the Administration to exercise all of the functions, powers, and duties created and established by this chapter, except as otherwise provided. (Pub. L. 90–351, title 1, § 101, June 19, 1968, 82 Stat. 198.)

SUBCHAPTER II.—PLANNING GRANTS

§ 3721. Statement of purpose.

It is the purpose of this subchapter to encourage States and units of general local government to prepare and adopt comprehensive law enforcement plans based on their evaluation of State and local problems of law enforcement. (Pub. L. 90–351, title I, § 201, June 19, 1968, 82 Stat. 198.)

§ 3722. State planning agencies; establishment and operation; time of applications for grants.

The Administration shall make grants to the States for the establishment and operation of State law enforcement planning agencies (hereinafter referred to in this chapter as "State planning agencies") for the preparation, development, and revision of the State plans required under section 3733 of this title. Any State may make application to the Administration for such grants within six months of June 19, 1968. (Pub. L. 90–351, title I, § 202, June 19, 1968, 82 Stat. 198.)

§ 3723. Same; general provisions.

(a) Establishment and maintenance; creation or designation by chief executive; representative capacity.

A grant made under this subchapter to a State shall be utilized by the State to establish and maintain a State planning agency. Such agency shall be created or designated by the chief executive of the State and shall be subject to his jurisdiction. The State planning agency shall be representative of law enforcement agencies of the State and of the units of general local government within the State.

(b) Function, powers, and duties of State planning agencies.

The State planning agency shall—

(1) develop, in accordance with subchapter III of this chapter, a comprehensive statewide plan for the improvement of law enforcement throughout the State;

(2) define, develop, and correlate programs and projects for the State and the units of general local government in the State or combinations of States or units for improvement in law enforcement; and

(3) establish priorities for the improvement in law enforcement throughout the State.

(c) Availability of Federal funds to local government units for formulation and development of State plan.

The State planning agency shall make such arrangements as such agency deems necessary to provide that at least 40 per centum of all Federal funds granted to such agency under this subchapter for any fiscal year will be available to units of general local government or combinations of such units to enable such units and combinations of such units to participate in the formulation of the comprehensive State plan required

under this subchapter. Any portion of such 40 per centum in any State for any fiscal year not required for the purpose set forth in the preceding sentence shall be available for expenditure by such State agency from time to time on dates during such year as the Administration may fix, for the development by it of the State plan required under this subchapter. (Pub. L. 90–351, title I, § 203, June 19, 1968, 82 Stat. 199.)

§ 3724. Amount of grant; limitation.

A Federal grant authorized under this subchapter shall not exceed 90 per centum of the expenses of the establishment and operation of the State planning agency, including the preparation, development, and revision of the plans required by subchapter III of this chapter. Where Federal grants under this subchapter are made directly to units of general local government as authorized by section 3735 of this title, the grant shall not exceed 90 per centum of the expenses of local planning, including the preparation, development, and revision of plans required by subchapter III of this chapter. (Pub. L. 90–351, title I, § 204, June 19, 1968, 82 Stat. 199.)

§ 3725. Allocation of funds.

Funds appropriated to make grants under this subchapter for a fiscal year shall be allocated by the Administration among the States for use therein by the State planning agency or units of general local government, as the case may be. The Administration shall allocate $100,000 to each of the States; and it shall then allocate the remainder of such funds available among the States according to their relative populations. (Pub. L. 90–351, title I, § 205, June 19, 1968, 82 Stat. 199.)

SUBCHAPTER III.—GRANTS FOR LAW ENFORCEMENT PURPOSES

§ 3731. General provisions.

(a) Statement of purpose.

It is the purpose of this subchapter to encourage States and units of general local government to carry out programs and projects to improve and strengthen law enforcement.

(b) Categories of programs and projects.

The Administration is authorized to make grants to States having comprehensive State plans approved by it under this subchapter, for—

(1) Public protection, including the development, demonstration, evaluation, implementation, and purchase of methods, devices, facilities, and equipment designed to improve and strengthen law enforcement and reduce crime in public and private places.

(2) The recruiting of law enforcement personnel and the training of personnel in law enforcement.

(3) Public education relating to crime prevention and encouraging respect for law and order, including education programs in schools and programs to improve public understanding of and cooperation with law enforcement agencies.

(4) Construction of buildings or other physical facilities which would fulfill or implement the purposes of this section.

(5) The organization, education, and training of special law enforcement units to combat organized crime, including the establishment and development of State organized crime prevention councils, the recruiting and training of special investigative and prosecuting personnel, and the development of systems for collecting, storing, and disseminating information relating to the control of organized crime.

(6) The organization, education and training of regular law enforcement officers, special law enforcement units, and law enforcement reserve units for the prevention, detection, and control of riots and other violent civil disorders, including the acquisition of riot control equipment.

(7) The recruiting, organization, training and education of community service officers to serve with and assist local and State law enforcement agencies in the discharge of their duties through such activities as recruiting; improvement of police-community relations and grievance resolution mechanisms; community patrol activities; encouragement of neighborhood participation in crime prevention and public safety efforts; and other activities designed to improve police capabilities, public safety and the objectives of this section: *Provided*, That in no case shall a grant be made under this subcategory without the approval of the local government or local law enforcement agency.

(c) Amount of grant; limitation; land acquisition prohibition.

The amount of any Federal grant made under paragraph (5) or (6) of subsection (b) of this section may be up to 75 per centum of the cost of the program or project specified in the application for such grant. The amount of any grant made under paragraph (4) of subsection (b) of this section may be up to 50 per centum of the cost of the program or project specified in the application for such grant. The amount of any other grant made under this subchapter may be up to 60 per centum of the cost of the program or project specified in the application for such grant: *Provided*, That no part of any grant for the purpose of construction of buildings or other physical facilities shall be used for land acquisition.

(d) Compensation of personnel; limitations.

Not more than one-third of any grant made under this subchapter may be expended for the compensation of personnel. The amount of any such grant expended for the compensation of personnel shall not exceed the amount of State or local funds made available to increase such compensation. The limitations contained in this subsection shall not apply to the compensation of personnel for time engaged in coducting or undergoing training programs. (Pub. L. 90–351, title I, § 301, June 19, 1968, 82 Stat. 199.)

§ 3732. State planning agency, establishment; comprehensive State plan, submission.

Any State desiring to participate in the grant program under this subchapter shall establish a State planning agency as described in subchapter II of this chapter and shall within six months after approval of a planning grant under subchapter II of this chapter submit to the Administration through such State planning agency a comprehensive State plan formulated pursuant to subchapter II of this chapter. (Pub. L. 90–351, title I, § 302, June 19, 1968, 82 Stat. 200.)

§ 3733. State plans; comprehensive requirements.

The Adminstration shall make grants under this chapter to a State planning agency if such agency has on file with the Administration an approved comprehensive State plan (not more than one year in age) which conforms with the purposes and requirements of this chapter. Each such plan shall—

(1) provide for the administration of such grants by the State planning agency;

(2) provide that at least 75 per centum of all Federal funds granted to the State planning agency under this subchapter for any fiscal year will be available to units of general local government or combinations of such units for the development and implementation of programs and projects for the improvement of law enforcement;

(3) adequately take into account the needs and requests of the units of general local government in the State and encourage local initiative in the State and encourage local initiative in the development of programs and projects for improvements in law enforcement, and provide for an appropriately balanced allocation of funds between the State and the units of general local government in the State and among such units;

(4) incorporate innovations and advanced techniques and contain a comprehensive outline of priorities for the improvement and coordination of all aspects of law enforcement dealt with in the plan, including descriptions of: (A) general needs and problems; (B) existing systems; (C) available resources; (D) organizational systems and administrative machinery for implementing the plan; (E) the direction, scope, and general types of improvements to be made in the future; and (F) to the extent appropriate, the relationship of the plan to other relevant State or local law enforcement plans and systems;

(5) provide for effective utilization of existing facilities and permit and encourage units of general local government to combine or provide for cooperative arrangements with respect to services, facilities, and equipment;

(6) provide for research and development;

(7) provide for appropriate review of procedures of actions taken by the State planning agency disapproving an application for which funds are available or terminating or refusing to continue financial assistance to units of general local government or combinations of such units;

(8) demonstrate the willingness of the State and units of general local government to assume the costs of improvements funded under this subchapter after a reasonable period of Federal assistance;

(9) demonstrate the willingness of the State to contribute technical assistance or services for programs and projects contemplated by the statewide comprehensive plan and the programs and projects contemplated by units of general local government;

(10) set forth policies and procedures designed to assure that Federal funds made available under this chapter will be so used as not to supplant State or local funds, but to increase the amounts of such funds that would in the absence of such Federal funds be made available for law enforcement;

(11) provide for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting of funds received under this subchapter; and

(12) provide for the submission of such reports in such form and containing such information as the administration may reasonably require.

Any portion of the 75 per centum to be made available pursuant to paragraph (2) of this section in any State in any fiscal year not required for the purposes set forth in such paragraph (2) shall be available for expenditure by such State agency from time to time on dates during such year as the Administration may fix, for the development and implementation of programs and projects for the improvement of law enforcement and in conformity with the State plan. (Pub. L. 90–351, title I, § 303, June 19, 1968, 82 Stat. 201.)

§ 3734. Applications for financial assistance from local government units; disbursements by State planning agencies.

State planning agencies shall receive applications for financial assistance from units of general local government and combinations of such units. When a State planning agency determines that such an application is in accordance with the purposes stated in section 3731 of this title and is in conformance with any existing statewide comprehensive law enforcement plan, the State planning agency is authorized to disburse funds to the applicant. (Pub. L. 90–351, title I, § 304, June 19, 1968, 82 Stat. 202.)

§ 3735. Grants to local government units; certification; evaluation of project; multi-State applications; amount of grant, limitation.

Where a State fails to make application for a grant to establish a State planning agency pursuant to subchapter II of this chapter within six months after June 19, 1968, or where a State fails to file a comprehensive plan pursuant to subchapter II of this chapter within six months after approval of a planning grant to establish a State planning agency, the Administration may make grants under subchapter II and subchapter III of this chapter to units of general local government or combinations of such units: *Provided, however,* That any such unit or combination of such units must certify that it has submitted a copy of its

application to the chief executive of the State in which such unit or combination of such units is located. The chief executive shall be given not more than sixty days from date of receipt of the application to submit to the Administration in writing an evaluation of the project set forth in the application. Such evaluation shall include comments on the relationship of the application to other applications then pending, and to existing or proposed plans in the State for the development of new approaches to and improvements in law enforcement. If an application is submitted by a combination of units of general local government which is located in more than one State, such application must be submitted to the chief executive of each State in which the combination of such units is located. No grant under this section to a local unit of general government shall be for an amount in excess of 60 per centum of the cost of the project or program with respect to which it was made. (Pub. L. 90–351, title I, § 305, June 19, 1968, 82 Stat. 202.)

§ 3736. Allocation of funds.

Funds appropriated to make grants under this subchapter for a fiscal year shall be allocated by the Administration among the States for use therein by the State planning agency or units of general local government, as the case may be. Of such funds, 85 per centum shall be allocated among the States according to their respective populations and 15 per centum thereof shall be allocated as the Administration may determine, plus such additional amounts as may be made available by virtue of the application of the provisions of section 3757 of this title to the grant to any State. (Pub. L. 90–351, title I, § 306, June 19, 1968, 82 Stat. 202.)

§ 3737. Priority programs and projects.

(a) In making grants under this subchapter, the Administration and each State planning agency, as the case may be, shall give special emphasis, where appropriate or feasible, to programs and projects dealing with the prevention, detection, and control of organized crime and of riots and other violent civil disorders.

(b) Notwithstanding the provisions of section 3733 of this title, until August 31, 1968, the Administration is authorized to make grants for programs and projects dealing with the prevention, detection, and control of riots and other violent civil disorders on the basis of applications describing in detail the programs, projects, and costs of the items for which the grants will be used, and the relationship of the programs and projects to the applicant's general program for the improvement of law enforcement. (Pub. L. 90–351, title I, § 307, June 19, 1968, 82 Stat. 202.)

SUBCHAPTER IV.—TRAINING, EDUCATION, RESEARCH, DEMONSTRATION, AND SPECIAL GRANTS

§ 3741. Statement of purpose.

It is the purpose of this subchapter to provide for and encourage training, education, research, and development for the purpose of improving law enforcement and developing new methods for the prevention and reduction of crime, and the detection and apprehension of criminals. (Pub. L. 90–351, title I, § 401, June 19, 1968, 82 Stat. 203.)

§ 3742. National Institute of Law Enforcement and Criminal Justice.

(a) Establishment; general authority of Administration over Institute; statement of purpose.

There is established within the Department of Justice a National Institute of Law Enforcement and Criminal Justice (hereafter referred to in this subchapter as "Institute"). The Institute shall be under the general authority of the Administration. It shall be the purpose of the Institute to encourage research and development to improve and strengthen law enforcement.

(b) Functions, powers, and duties of Institute.

The Institute is authorized—

(1) to make grants to, or enter into contracts with, public agencies, institutions of higher education, or private organizations to conduct research, demonstrations, or special projects pertaining to the purposes described in this chapter, including the development of new or improved approaches, techniques, systems, equipment, and devices to improve and strengthen law enforcement;

(2) to make continuing studies and undertake programs of research to develop new or improved approaches, techniques, systems, equipment, and devices to improve and strengthen law enforcement, including, but not limited to, the effectiveness of projects or programs carried out under this chapter;

(3) to carry out programs of behavioral research designed to provide more accurate information on the cause of crime and the effectiveness of various means of preventing crime, and to evaluate the success of correctional procedures;

(4) to make recommendations for action which can be taken by Federal, State, and local governments and by private persons and organizations to improve and strengthen law enforcement;

(5) to carry out programs of instructional assistance consisting of research fellowships for the programs provided under this section, and special workshops for the presentation and dissemination of information resulting from research, demonstrations, and special projects authorized by this chapter;

(6) to carry out a program of collection and dissemination of information obtained by the Institute or other Federal agencies, public agencies, institutions of higher education, or private organizations engaged in projects under this chapter, including information relating to new or improved approaches, techniques, systems, equipment, and devices to improve and strengthen law enforcement; and

(7) to establish a research center to carry out the programs described in this section.

(Pub. L. 90–351, title I, § 402, June 19, 1968, 82 Stat. 203.)

§ 3743. Amount of grant, limitation; contributions requirement.

A grant authorized under this subchapter may be up to 100 per centum of the total cost of each project for which such grant is made. The Administration shall require, whenever feasible, as a condition of approval of a grant under this subchapter, that the recipient contribute money, facilities, or services to carry out the purpose for which the grant is sought.
(Pub. L. 90–351, title I, § 403, June 19, 1968, 82 Stat. 203.)

§ 3744. F.B.I. law enforcement training programs.

(a) Functions, powers, and duties of Director.

The Director of the Federal Bureau of Investigation is authorized to—

(1) establish and conduct training programs at the Federal Bureau of Investigation National Academy at Quantico, Virginia, to provide, at the request of a State or unit of local government, training for State and local law enforcement personnel;

(2) develop new or improved approaches, techniques, systems, equipment, and devices to improve and strengthen law enforcement; and

(3) assist in conducting, at the request of a State or unit of local government, local and regional training programs for the training of State and local law enforcement personnel. Such training shall be provided only for persons actually employed as State police or highway patrol, police of a unit of local government, sheriffs and their deputies, and such other persons as the State or unit may nominate for police training while such persons are actually employed as officers of such State or unit.

(b) General authority of Attorney General over Director.

In the exercise of the functions, powers, and duties established under this section the Director of the Federal Bureau of Investigation shall be under the general authority of the Attorney General. (Pub. L. 90–351, title I, § 404, June 19, 1968, 82 Stat. 204.)

§ 3745. Repeal of Law Enforcement Assistance Act of 1965; funds for continuation of projects; immediate duties and discretion of Administration.

Subject to the provisions of this section, the Law Enforcement Assistance Act of 1965 (79 Stat. 828) is repealed: *Provided*, That—

(1) The Administration, or the Attorney General until such time as the members of the Administration are appointed, is authorized to obligate funds for the continuation of projects approved under the Law Enforcement Assistance Act of 1965 prior to June 19, 1968, to the extent that such approval provided for continuation.

(2) Any funds obligated under subsection (1) of this section and all activities necessary or appropriate for the review under subsection (3) of this section may be carried out with funds previously appropriated and funds appropriated pursuant to this chapter.

(3) Immediately upon establishment of the Administration, it shall be its duty to study, review, and evaluate projects and programs funded under the Law Enforcement Assistance Act of 1965. Continuation of projects and programs under subsections (1) and (2) of this section shall be in the discretion of the Administration.
(Pub. L. 90–351, title I, § 405, June 19, 1968, 82 Stat. 204.)

REFERENCES IN TEXT

The Law Enforcement Assistance Act of 1965, referred to in the text, was set out as a note preceding section 3001 of Title 18, Crimes and Criminal Procedure, and is now covered by this chapter.

CODIFICATION

Provisions have been set out without a subsec. (a) designation. The original enactment provided for a subsec. (a) but not for any other subsections.

§ 3746. Academic educational assistance.

(a) Authority of Administration; consultation with Commissioner of Education.

Pursuant to the provisions of subsections (b) and (c) of this section, the Administration is authorized, after appropriate consultation with the Commissioner of Education, to carry out programs of academic educational assistance to improve and strengthen law enforcement.

(b) Loans; cancellation for service.

The Administration is authorized to enter into contracts to make, and make, payments to institutions of higher education for loans, not exceeding $1,800 per academic year to any person, to persons enrolled on a full-time basis in undergraduate or graduate programs approved by the Administration and leading to degrees or certificates in areas directly related to law enforcement or preparing for employment in law enforcement, with special consideration to police or correctional personnel of States or units of general local government on academic leave to earn such degrees or certificates. Loans to persons assisted under this subsection shall be made on such terms and conditions as the Administration and the institution offering such programs may determine, except that the total amount of any such loan, plus interest, shall be canceled for service as a full-time officer or employee of a law enforcement agency at the rate of 25 per centum of the total amount of such loans plus interest for each complete year of such service or its equivalent of such service, as determined under regulations of the Administration.

(c) Tuition and fees; service agreements.

The Administration is authorized to enter into contracts to make, and make, payments to institutions of higher education for tuition and fees, not exceeding $200 per academic quarter or $300 per semester for any person, for officers of any publicly funded law enforcement agency enrolled on a full-time or part-time basis in courses included in an undergraduate or graduate program which is approved by the Administration and which leads to a degree or certificate in an area related to law enforcement or

an area suitable for persons employed in law enforcement. Assistance under this subsection may be granted only on behalf of an applicant who enters into an agreement to remain in the service of the law enforcement agency employing such applicant for a period of two years following completion of any course for which payments are provided under this subsection, and in the event such service is not completed, to repay the full amount of such payments on such terms and in such manner as the Administration may prescribe. (Pub. L. 90–351, title I, § 406, June 19, 1968, 82 Stat. 204.)

SUBCHAPTER V.—ADMINISTRATIVE PROVISIONS

§ 3751. Rules, regulations, and procedures.

The Administration is authorized, after appropriate consultation with representatives of States and units of general local government, to establish such rules, regulations, and procedures as are necessary to the exercise of its functions, and are consistent with the stated purpose of this chapter. (Pub. L. 90–351, title I, § 501, June 19, 1968, 82 Stat. 205.)

§ 3752. Delegation of functions.

The Administration may delegate to any officer or official of the Administration, or, with the approval of the Attorney General, to any officer of the Department of Justice such functions as it deems appropriate. (Pub. L. 90–351, title I, § 502, June 19, 1968, 82 Stat. 205.)

§ 3753. Transfer of functions, powers, and duties of Administration within Department of Justice.

The functions, powers, and duties specified in this chapter to be carried out by the Administration shall not be transferred elsewhere in the Department of Justice unless specifically hereafter authorized by the Congress. (Pub. L. 90–351, title I, § 503, June 19, 1968, 82 Stat. 205.)

§3754. Place in United States for hearings, subpenas, oaths, examination of witnesses, and reception of evidence.

In carrying out its functions, the Administration, or upon authorization of the Administration, any member thereof or any hearing examiner assigned to or employed by the Administration, shall have the power to hold hearings, sign and issue subpenas, administer oaths, examine witnesses, and receive evidence at any place in the United States it may designate. (Pub. L. 90–351, title I, § 504, June 19, 1968, 82 Stat. 205.)

§ 3755. Officers and employees.

Subject to the civil service and classification laws, the Administration is authorized to select, appoint, employ, and fix compensation of such officers and employees, including hearing examiners, as shall be necessary to carry out its powers and duties under this chapter. (Pub. L. 90–351, title I, § 507, June 19, 1968, 82 Stat. 205.)

References in Text

The civil service and classification laws, referred to in the text, are classified generally to Title 5, Government Organization and Employees.

§ 3756. Use of services, equipment, personnel, and facilities of other Federal agencies; reimbursement; reciprocal use by such other Federal agencies; availability of State agency cooperation, services, records, and facilities.

The Administration is authorized, on a reimbursable basis when appropriate, to use the available services, equipment, personnel, and facilities of the Department of Justice and of other civilian or military agencies and instrumentalities of the Federal Government, and to cooperate with the Department of Justice and such other agencies and instrumentalities in the establishment and use of services, equipment, personnel, and facilities of the Administration. The Administration is further authorized to confer with and avail itself of the cooperation services, records, and facilities of State, municipal, or other local agencies. (Pub. L. 90–351, title I, § 508, June 19, 1968, 82 Stat. 205.)

§ 3757. Withholding of payments for noncompliance with certain requirements; notice and hearing.

Whenever the Administration, after reasonable notice and opportunity for hearing to an applicant or a grantee under this chapter finds that, with respect to any payments made or to be made under this chapter; there is a substantial failure to comply with—

(a) the provisions of this chapter;

(b) regulations promulgated by the Administration under this chapter; or

(c) a plan or application submitted in accordance with the provisions of this chapter;

the Administration shall notify such applicant or grantee that further payments shall not be made (or in its discretion that further payments shall not be made for activities in which there is such failure), until there is no longer such failure. (Pub. L. 90–351, title I, § 509, June 19, 1968, 82 Stat. 206.)

§ 3758. Administration proceedings.

(a) Finality of action.

In carrying out the functions vested by this chapter in the Administration, the determination, findings, and conclusions of the Administration shall be final and conclusive upon all applicants, except as hereafter provided.

(b) Notice and hearing.

If the application has been rejected or an applicant has been denied a grant or has had a grant, or any portion of a grant, discontinued, or has been given a grant in a lesser amount than such applicant believes appropriate under the provisions of this chapter, the Administration shall notify the applicant or grantee of its action and set forth the reason for the action taken. Whenever an applicant or grantee requests a hearing on action taken by the Administration on an application or a grant the Administration, or any authorized officer thereof, is

authorized and directed to hold such hearings or investigations at such times and places as the Administration deems necessary, following appropriate and adequate notice to such applicant; and the findings of fact and determinations made by the Administration with respect thereto shall be final and conclusive, except as otherwise provided herein.

(c) Rehearing; additional information.

If such applicant is still dissatisfied with the findings and determinations of the Administration, following the notice and hearing provided for in subsection (b) of this section, a request may be made for rehearing, under such regulations and procedures as the Administration may establish, and such applicant shall be afforded an opportunity to present such additional information as may be deemed appropriate and pertinent to the matter involved. The findings and determinations of the Administration, following such rehearing, shall be final and conclusive upon all parties concerned, except as hereafter provided. (Pub. L. 90–351, title I, § 510, June 19, 1968, 82 Stat. 206.)

§ 3759. Judicial review.

(a) Petition; record.

If any applicant or grantee is dissatisfied with the Administration's final action with respect to the approval of its application or plan submitted under this chapter, or any applicant or grantee is dissatisfied with the Administration's final action under section 3757 or section 3758 of this title, such applicant or grantee may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such applicant or grantee is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administration. The Administration shall thereupon file in the court the record of the proceedings on which the action of the Administration was based, as provided in section 2112 of Title 28.

(b) Conclusiveness of determinations.

The determinations and the findings of fact by the Administration, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Administration to take further evidence. The Administration may thereupon make new or modified findings of fact and may modify its previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact or determinations shall likewise be conclusive if supported by substantial evidence.

(c) Jurisdiction of courts of appeals; review by Supreme Court.

Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Administration or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28. (Pub. L. 90–351, title I, § 511, June 19, 1968, 82 Stat. 206.)

§ 3760. Duration of programs.

Unless otherwise specified in this chapter, the Administration shall carry out the programs provided for in this chapter during the fiscal year ending June 30, 1968, and the five succeeding fiscal years. (Pub. L. 90–351, title I, § 512, June 19, 1968, 82 Stat. 207.)

§ 3761. Coordination of law enforcement assistance and related Federal programs; statistics, etc., from other Federal agencies.

To insure that all Federal assistance to State and local programs under this chapter is carried out in a coordinated manner, the Administration is authorized to request any Federal department or agency to supply such statistics, data, program reports, and other material as the Administration deems necessary to carry out its functions under this chapter. Each such department or agency is authorized to cooperate with the Administration and, to the extent permitted by law, to furnish such materials to the Administration. Any Federal department or agency engaged in administering programs related to this chapter shall, to the maximum extent practicable, consult with and seek advice from the Administration to insure fully coordinated efforts, and the Administration shall undertake to coordinate such efforts. (Pub. L. 90–351, title I, § 513, June 19, 1968, 82 Stat. 207.)

§ 3762. Reimbursement of other Federal agencies.

The Administration may arrange with and reimburse the heads of other Federal departments and agencies for the performance of any of its functions under this chapter. (Pub. L. 90–351, title I, § 514, June 19, 1968, 82 Stat. 207.)

§ 3763. Functions, powers, and duties of Administration.

The Administration is authorized—

(a) to conduct evaluation studies of the programs and activities assisted under this chapter;

(b) to collect, evaluate, publish, and disseminate statistics and other information on the condition and progress of law enforcement in the several States; and

(c) to cooperate with and render technical assistance to States, units of general local government, combinations of such States or units, or other public or private agencies, organizations, or institutions in matters relating to law enforcement.

(Pub. L. 90–351, title I, § 515, June 19, 1968, 82 Stat. 207.)

§ 3764. Payments.

(a) Installments; advances or reimbursement.

Payments under this chapter may be made in installments, and in advance or by way of reimbursement, as may be determined by the Administration.

(b) Maximum sum for any one State.

Not more than 12 per centum of the sums appropriated for any fiscal year to carry out the provisions of

this chapter may be used within any one State except that this limitation shall not apply to grants made pursuant to subchapter IV of this chapter. (Pub. L. 90–351, title I, § 516, June 19, 1968, 82 Stat. 207.)

§ 3765. Advisory committees; appointment, compensation, and travel expenses.

The Administration is authorized to appoint such technical or other advisory committees to advise the Administration with respect to the administration of this chapter as it deems necessary. Members of such committees not otherwise in the employ of the United States, while attending meetings of the committees, shall be entitled to receive compensation at a rate to be fixed by the Administration but not exceeding $75 per diem, and while away from home or regular place of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5 for persons in the Government service employed intermittently. (Pub. L. 90–351, title I, § 517, June 19, 1968, 82 Stat. 207.)

§ 3766. Construction unauthorized.

(a) Federal direction, supervision or control of State police force or other law enforcement agency.

Nothing contained in this chapter or any other Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over any police force or any other law enforcement agency of any State or any political subdivision thereof.

(b) Administration achievement or elimination of racial balance or imbalance through adoption of percentage ratio, quota system or other program.

Notwithstanding any other provision of law nothing contained in this chapter shall be construed to authorize the Administration (1) to require, or condition the availability or amount of a grant upon, the adoption by an applicant or grantee under this chapter of a percentage ratio, quota system, or other program to achieve racial balance or to eliminate racial imbalance in any law enforcement agency, or (2) to deny or discontinue a grant because of the refusal of an applicant or grantee under this chapter to adopt such a ratio, system, or other program. (Pub. L. 90–351, title I, § 518, June 19, 1968, 82 Stat. 208.)

§ 3767. Reports to President and Congress.

On or before August 31, 1968, and each year thereafter, the Administration shall report to the President and to the Congress on activities pursuant to the provisions of this chapter during the preceding fiscal year. (Pub. L. 90–351, title I, § 519, June 19, 1968, 82 Stat. 208.)

§ 3768. Authorization of appropriations.

For the purpose of carrying out this chapter, there is authorized to be appropriated the sums of $100,111,000 for the fiscal years ending June 30, 1968, and June 30, 1969, $300,000,000 for the fiscal year ending June 30, 1970, and for succeeding fiscal years such sums as the Congress might authorize: *Provided, however*, That of the amount appropriated for the fiscal years ending June 30, 1968, and June 30, 1969—

(a) the sum of $25,000,000 shall be for the purposes of subchapter II of this chapter;

(b) the sum of $50,000,000 shall be for the purposes of subchapter III of this chapter; of which amount—

(1) not more than $2,500,000 shall be for the purposes of section 3731(b)(3) of this title;

(2) not more than $15,000,000 shall be for the purposes of section 3731(b)(3) of this title; of which not more than $1,000,000 may be used within any one State;

(3) not more than $15,000,000 shall be for the purposes of section 3731(b)(6) of this title; and

(4) not more than $10,000,000 shall be for the purposes of correction, probation, and parole; and

(c) the sum of $25,111,000 shall be for the purposes of subchapter IV of this chapter; of which $5,111,000 shall be for the purposes of section 3744 of this title; and not more $10,000,000 shall be for the purposes of section 3746 of this title.

(Pub. L. 90–351, title I, § 520, June 19, 1968, 82 Stat. 208, amended Pub. L. 90–462, § 1, Aug. 8, 1968, 82 Stat. 638.)

AMENDMENTS

1968—Subsec. (b)(1)—(3). Pub. L. 90–462 substituted "3731" for "3732" in cls. (1)—(3) where referring to section 3732(b)(3), 3732(b)(5), and 3732(b)(6), respectively.

§ 3769. Recordkeeping requirements.

(a) Scope of information.

Each recipient of assistance under this Act shall keep such records as the Administration shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) Access; audits and examinations.

The Administration and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for purpose of audit and examination to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this chapter. (Pub. L. 90–351, title I, § 521, June 19, 1968, 82 Stat. 208.)

REFERENCES IN TEXT

For classifications in the Code of this Act, referred to in subsec. (a), meaning the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90–351, see Short Title note set out under section 3701 of this title.

SUBCHAPTER VI.—MISCELLANEOUS PROVISIONS

§ 3781. Definitions.

As used in this chapter—

(a) Law enforcement.

"Law enforcement" means all activities pertaining to crime prevention or reduction and enforcement of the criminal law.

(b) Organized crime.

"Organized crime" means the unlawful activities of the members of a highly organized, disciplined association engaged in supplying illegal goods and services including but not limited to gambling, prostitution, loan sharking, narcotics, labor racketeering, and other unlawful activities of members of such organizations.

(c) State.

"State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(d) Unit of general local government.

"Unit of general local government" means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, or an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior.

(e) Combination.

"Combination" as applied to States or units of general local government means any grouping or joining together of such States or units for the purpose of preparing, developing, or implementing a law enforcement plan.

(f) Construction.

"Construction" means the erection, acquisition, expansion, or repair (but not including minor remodeling or minor repairs) of new or existing buildings or other physical facilities, and the acquisition or installation of initial equipment therefor.

(g) State organized crime prevention council.

"State organized crime prevention council" means a council composed of not more than seven persons established pursuant to State law or established by the chief executive of the State for the purpose of this chapter, or an existing agency so designated, which council shall be broadly representative of law enforcement officials within such State and whose members by virtue of their training or experience shall be knowledgeable in the prevention and control of organized crime.

(h) Metropolitan area.

"Metropolitan area" means a standard metropolitan statistical area as established by the Bureau of the Budget, subject, however, to such modifications and extensions as the Administration may determine to be appropriate.

(i) Public agency.

"Public agency" means any State, unit of local government, combination of such States or units, or any department, agency, or instrumentality of any of the foregoing.

(j) Institution of higher education.

"Institution of higher education" means any such institution as defined by section 1141 of this title, subject, however, to such modifications and extensions as the Administration may determine to be appropriate.

(k) Community service officer.

"Community service officer" means any citizen with the capacity, motivation, integrity, and stability to assist in or perform police work but who may not meet ordinary standards for employment as a regular police officer selected from the immediate locality of the police department of which he is to be a part, and meeting such other qualifications promulgated in regulations pursuant to section 3751 of this title as the administration may determine to be appropriate to further the purposes of section 3731(b)(7) of this title and this Act. (Pub. L. 90–371, title I, § 601, June 19, 1968, 82 Stat. 209.)

REFERENCES IN TEXT

For classifications in the Code of this Act, referred to in subsec. (k), meaning the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90–351, see Short Title note set out under section 3701 of this title.

APPENDIX B

APPENDIX B

A STUDY OF GRAND JURY SERVICE BY PERSONS OF SPANISH SURNAME AND BY INDIANS IN SELECTED CALIFORNIA COUNTIES

Submitted by:
California Rural Legal Assistance
Don B. Kates, Jr.,
Director of Legal Research
To:
United States Commission
on Civil Rights
June 1968

SUMMARY

The purpose of this Study was to ascertain whether Indians and persons of Spanish surname * are accorded equal opportunity to serve as grand jurors in California. The Study encompassed the 20 California counties with the largest percentages of Spanish-surname population and two counties with large percentages of Indian population. (These counties included nearly ¾'s of California's total population and over ⅔'s of its Spanish-surname population.) The results indicate that the minorities studied do not enjoy equal opportunity to serve as grand jurors. Statistical analysis of California grand jury selection compels the conclusion that the selection process has been deeply affected by discrimination. In at least 17 of the 22 counties the underrepresentation of minority persons was so great as to raise a judicial presumption of discrimination prohibited by the Equal Protection Clause. And in none of the counties studied did the percentage of minority group grand jurors ever remotely approach the minority percentage of the population.

*See n. 2.

INTRODUCTION

On April 11, 1968, the United States Commission on Civil Rights contracted with California Rural Legal Assistance (CRLA) to do a computerized study of grand jury selection in 20 California counties. CRLA, a California nonprofit corporation funded primarily by the Federal Office of Economic Opportunity, provides legal services to rural indigents, a large proportion of whom are Mexican-Americans. The Civil Rights Commission sponsored this Study in fulfillment of its duties under 42 U.S.C. 1975c(a)(2).[1] CRLA undertook this Study pursuant to its continuing interest in the fair and equal administration of justice in the State of California.

As initially conceived, the major focus of the Study was grand jury service by persons bearing Spanish surnames.[2] When it was discovered that the CRLA Indian Division[3] was independently investigating grand jury service by Indians in two additional California counties, the original Study design was expanded to include these statistics.

The unique procedural features of the Study included the use of a computer to identify all Spanish-surname grand jurors and the use of statistical decision theory in the analysis of jury composition.[4] Professor Jerome Kirk of the University of California at Irvine did the mathematical computations. George Duke and Robert Pelcyger of the CRLA Indian Division provided the jury selection data on Indians. The raw data for the 20 original counties were collected by the following persons: Diana Drake, Sheila Hunt, Susan Hunt, Anne Kuszynski, Lisa Mandel, Judy McCance, Belinda Smith, Ruth Spear and Claudia Zeiler. Liason officer was Lawrence B. Glick, Assistant General Counsel of the United States Civil Rights Commission.

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[1] "(a) The Commission shall—
(2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, or national origin or in the administration of justice. . . ."

[2] In general usage, and as used herein, the phrase "Spanish surname" attempts to describe as a whole all persons of Spanish ancestry, including descendents of inhabitants of former Spanish dependencies in the New World. In California, the term Spanish surname allows a comprehensive description of a population of Spanish ancestry which is primarily Mexican-American but includes substantial numbers of persons from Latin America, South America, and Spain. Functionally, Spanish surnames are those recognized as such in the *Spanish Name Book* compiled by the Immigration Bureau and used in the Spanish surname analysis of the Census. Persons bearing Spanish surnames have been recognized as a group for the purpose of determining whether constitutionally prohibited criteria have been used in selection of juries. *Montoya v. People,* 345 P. 2d 1062 (S. Ct., Colo., 1959) (held: juries were unconstitutionally selected in that persons with Spanish surnames were excluded).

[3] CRLA operates a special program dealing solely with the problems of California Indians.

[4] The mathematical analysis was based on Professor Finkelstein's germinal article "The Application of Statistical Decision Theory to the Jury Discrimination Cases", 80 Harv. L. Rev. 338 (1966). The principles set out in the article have been cited with approval by the United States Supreme Court, *Whitus v. Georgia,* 385 U.S. 545, 552, n. 2 (1967).

IMPORTANCE OF GRAND JURY SERVICE

Unlike trial jurors (who sit only to hear, and make final determinations in, a few civil or criminal cases) grand jurors serve for an entire year. The duties of grand jurors are twofold: to vote or refuse criminal indictments; to examine generally into conduct and administration of local government.

Selection as a grand or trial juror is the only opportunity which the average citizen has to participate actively in the administration of government. Such service is a fundamental prerogative of citizenship. The opportunity to participate in government through service as a grand or trial juror has been found to be of profound psychological importance to minority persons.[5] But the importance of service as a grand juror at least is more than purely psychological.

To the extent that the grand jury considers criminal cases, the presence of minority jurors minimizes the possibility that prejudice will affect its deliberations or that laws will not be enforced to protect minority groups. Equally important for minority groups is the grand jury's primary function of investigating and evaluating the administration of local government and the actions of county and city officials.[6] The all-encompassing nature of the grand jury's civil investigatory duties appears strikingly from the 1967 Final Report of the Los Angeles County Grand Jury. The Report contains commentary, frequently supplemented by criticism and specific recommendations, on such diverse subjects as: the Aid to Families with Dependent Children welfare program; telephone service for county offices; proposals to install a cafeteria in, and initiate admission fees for, the county museum; the respective virtues of various kinds of computers which might be used by the county controller's office; debt collection practices of a county hospital, accounting procedures and central planning for the county's airport; real estate management for the county's various lands—and myriad other subjects.[7]

In this context, it is not difficult to perceive how a sympathetic grand jury can prevent, punish, or mitigate official or private misconduct toward minority groups. Specifically, the grand jury might address itself to common minority group complaints such as failure to accord the services and facilities of local government equally to all,[8] or misconduct by police or other officials ranging from discourtesy to physical assault.[9] Within its criminal jurisdiction, the grand jury can, with or without the consent of the District Attorney,[10] indict anyone for crimes against or affecting minority persons.[11] In the course of its general inquiries into governmental affairs, the grand jury could probe into racial or ethnic biases in city and county hiring and jury selection or in the operation of housing projects or other local welfare programs. In monitoring the operations of local government, the grand jury can determine whether all sections of the community are equally enjoying the benefits of such services as police and fire protection, sewer and water lines, sidewalks, streets, street lights, parks, swimming, and other recreational facilities. The grand jury could also interest itself in the amount of courtesy with which citizens are treated by civil servants. As in most of these instances misconduct will not constitute an indictable offense, the only sanction available to the grand jury is public exposure and censure in its annual report. Some measure of responsiveness to such exposure is guaranteed by Penal Code § 933's requirement that "not later than the 60th day after the discharge of said grand jury, the board of supervisors shall comment on the findings and recommendations" of the grand jury report. The effect upon administrative practices of the often scathing criticisms contained

[5] See Broeder, "The Negro in Court", 1965 Duke Law Journal 19, for Negro reactions to jury service.

[6] The non-criminal duties of California grand juries are set out in California Penal Code §§ 919(b) and (c), 925, 928, and 933. The grand jury is required to: inquire into the "misconduct in office of public officers of every description within the county" (919(c)); "make a careful and complete examination of the accounts and records [of every county office]" (925); "investigate and report upon the needs of all county officers . . . including the abolition or creation of offices and . . . the method or system of performing the duties of, the several offices." (928). To assure that these investigations bear at least some fruit, Penal Code § 933 requires that "on or before December 31 of each year, each grand jury and panel during a calendar year shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government."

[7] Pp. 8–14.

[8] See, e.g., *Hobson* v. *Hanson*, 269 F. Supp. 401 (D.D.C. 1967).

[9] See, e.g., *Lucero* v. *Donovan*, 354 F. 2d 16 (9 Cir. 1964), *Lankford* v. *Gelston*, 364 F. 2d 197 (4 Cir. 1966).

[10] If the grand jury no longer trusts the District Attorney, it is expressly authorized to seek legal advice elsewhere; in extreme cases it may petition the Attorney General to employ special counsel and investigators for its use. Penal Code §§ 934–936. The grand jury's independence from the office of the District Attorney is a basic part of the California Grand Jury system. *Ex parte Peart*, 5 Cal. App. 2d 469, 43 P. 2d 334, 336 (1935).

[11] Penal Code § 917. With reference to public officials, such crimes might include murder, assault with a deadly weapon, or violations of Penal Code §§ 145 (delay in taking arrested person before magistrate—misdemeanor), 146 (false arrest—misdemeanor), 147 (inhumanity to prisoner—felony), 149 (assault by a police officer—felony), 337 (false imprisonment—felony), 521 (extortion under color of official right—misdemeanor). The number of occasions on which District Attorneys have initiated prosecutions against law enforcement officers or other public officials for such crimes—particularly violations of Penal Code §§ 145–147, 149, 337 and 520—is remarkably small. In a number of recent cases which California grand juries have refused to return indictments against police officers for such crimes. It appears that investigation was done by the police and the District Attorney's presentment was accompanied with a recommendation that the grand jury not indict.

Particularly important in a number of the counties studied would be the enforcement against local growers of laws designed to protect the rights, health and safety of California farm workers, e.g., California Labor Code §§ 215 (failure to conform to various laws assuring prompt and full pay—misdemeanor), 2441 (failure to provide fresh and pure drinking water—misdemeanor), 2646 (failure to maintain proper conditions in labor camps—misdemeanor), California Health and Safety Code § 5474.31 (failure to maintain decent conditions in agricultural labor fields—misdemeanor). Although violations of these statutes are widespread (see 19 Hastings Law Journal 399 (1967) prosecution is practically non-existent.

in grand jury reports—and the resultant publicity—should not be underrated. All in all, a sympathetic and vigilant grand jury could exercise a significant influence in preventing or correcting misconduct toward minorities. On the other hand the exclusion of minority persons from grand juries removes possible safeguards against misconduct. Indeed, misconduct is even encouraged to the extent that the minority is made to appear inferior, alien and legally outcast.

SELECTION PROCESS

The number of grand jurors necessary to compose a grand jury panel in California varies according to the size of the county. Counties with a population in excess of 4 million persons (i.e., Los Angeles) have 23 grand jurors; counties with a lesser population have 19 grand jurors.[12]

To qualify as a grand or trial juror a person must be (a) an American citizen; (b) above the age of twenty-one years; (c) a resident of the State and county for one year; (d) "of ordinary intelligence and not decrepit"; (e) possessed of "sufficient knowledge of the English language." [13] There is no literacy requirement and the knowledge of English need not be perfect so long as the court may find that the juror has substantial understanding.[14] Persons convicted of certain crimes, or who have served as grand or trial jurors in the preceding year, are disqualified.[15] Legislators, military officers, local officials, attorneys, physicians and persons in certain other occupations are exempt from grand or trial jury service.[16]

California law requires the jury commissioner of each county to submit a list (called a venire list) of persons suitable for grand jury duty to the Superior Court judges. If the judges approve that venire list, the names of the 19 (in Los Angeles 23) grand jurors are selected from it by lot. If the judges disapprove the list the names are selected by lot from a venire list provided by the judges.[17] The almost universal practice appears however to be selected by lot from a venire list provided by the Superior Court judges.[18] Generally speaking, the judges nominate as grand jurors those whom they or other prominent persons they know deem qualified. As a result, the racial, ethnic, social and economic composition of grand juries in California is limited by the acquaintanceship of the Superior Court judges. As one man commented in explaining how he was selected to be foreman of a grand jury, "[Of course], I have a lot of friends who are judges. I am a banker."[19]

CONSTITUTIONAL STANDARDS FOR JURY SELECTION

Racial exclusion in grand or trial jury selection was prohibited as early as the Civil Rights Act of 1875.[20] Five years later, the United States Supreme Court held that racial exclusion in the selection of juries violated the equal protection clause of the Fourteenth Amendment.[21] The constitutional prohibition is not limited to discrimination against Negroes, but bans discrimination against Mexican-Americans, persons of Spanish surname, Asiatics, Catholics, or any other group which may be excluded because of prejudice.[22] A quota system is as prohibited as complete exclusion—the Constitution prohibits any consideration whatever of racial, ethnic, social, economic or other irrelevant factors in the selection of jurors.[23] Several recent cases from the United States Court of Appeals for the Fifth Circuit have gone beyond prohibiting racial or ethnic exclusion, to establish an affirmative requirement. Although perfection may not be demanded, juries must be selected which represent a true cross-section of the community insofar as possible.[24]

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[12] Penal Code § 888.2.

[13] California Code of Civil Procedure § 198.

[14] *People* v. *Davis*, 36 Pac. 96 (1894).

[15] California Code of Civil Procedure § 199.

[16] California Code of Civil Procedure § 200.

[17] Penal Code §§ 896, 900, 901, 903.1, 903.3, 903.4.

[18] This has been the author's experience in Sonoma, Mendicino, Napa, and Lake Counties, but he is informed by the CRLA attorney in Imperial County that the Superior Court judges there do not participate in the venire selection procedure. The judges select the venires in Los Angeles, Orange and Sacramento Counties. See Los Angeles County Grand Jury Final Report, 1965, p. 13–14, Hearings of the California Assembly Interim Committee on Government Efficiency and Economy, Part I (Sept. 27, 1967) pp. 3 and 6. That judge selection is the general rule in California is confirmed by Olson in his massive study *The California Grand Jury*, pp. 95–121 (unpublished thesis, 1966—available in Los Angeles County Law Library).

[19] Hearings of the California Assembly Interim Committee on Government Efficiency and Economy, Part III (Oct. 31, 1967), p. 57.

[20] Now 18 U.S.C. 243: "No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any state, on account of race, color, or condition of previous servitude; and whoever, being an officer or other person charged with any duty in the selection or summoning of jurors, excludes or fails to summon any citizen for such cause, shall be fined not more than $5,000.00."

[21] *West Virginia* v. *Strauder*, 100 U.S. 303 (1879). Although the *Strauder* case involved a trial jury, the same principle has been applied to prohibit discrimination in the selection of grand juries as well. See, e.g., *Cassell* v. *Texas*, 339 U.S. 282 (1951) and cases there cited.

[22] *Swain* v. *Alabama*, 380 U.S. 202, 204–5 (1965), *Hernandez* v. *Texas*, 347 U.S. 475 (1954) (Mexican-Americans), *Montoya* v. *People*, 345 P. 2d 1062 (S. Ct., Colo., 1959) (persons of Spanish surname) *Leguillou* v. *Davis*, 115 F. Supp. 392 (S.D. V.I. 1953) (Puerto Ricans), *International Long Shoreman* v. *Ackerman*, 82 F. 2d 65 (D.Hi. 1948) (Filipinos and other Asiatics), *Juarez* v. *Texas*, 277 S.W. 1091 (Ct. of Crim. Ap., Tex., 1925) (Catholics), *Schowgurow* v. *State*, 213 A.2d 475 (Ct. of Ap., Md. 1965) (atheists and agnostics), *Labat* v. *Bennett*, 365 F. 2d 698 (5 Cir. 1966) (day laborers), *White* v. *Crook*, 251 F. Supp. 401 (M.D. Ala. 1966) (women).

[23] *Swain* v. *Alabama*, *Cassell* v. *Texas*, *Labat* v. *Bennett*, *supra* n. 22.

[24] *Brooks* v. *Beto*, 366 F. 2d 1, 11–12 (5 Cir. 1966), *Rabinowitz* v. *United States*, 366 F. 2d 34, (5 Cir. 1966), *Labat* v. *Bennett*, 365 F. 2d 698 (5 Cir. 1966), *Davis* v. *Davis*, 361 F. 2d 770 (5 Cir. 1966). These landmark cases find substantial support in the reasoning and dictum of a number of previous opinions of the United States Supreme Court. See, e.g., *Smith* v. *Texas*, 311 U.S. 128, 130 (1940), *Glasser* v. *U.S.*, 315 U.S. 60 (1941), *Cassell* v. *Texas*, 339 U.S. 282, 291 (1951) (concurring opinion of Mr. Justice Frankfurter), *Thiel* v. *Southern Pac. Co.*, 328 U.S. 217 (1946), *Ballard* v. *United States*, 329 U.S. 187 (1946). See n. 34, *infra*.

Of particular interest in the light of California grand jury selection procedures are cases where jurors were selected exclusively from personal acquaintances of the judges or jury commissioners. Although this method of selection has not yet been held invalid per se, the cases dealing with it impose an affirmative duty far beyond that imposed on jury selectors using any other method. Jury selectors who select jurors from among their own personal acquaintances may not plead that they do not know any qualified Negroes, Mexican-Americans, or other minority group members. If jurors are to be selected exclusively from the selector's acquaintances, the selectors must have or acquire a wide acquaintance with all racial, economic, and other strata of the community.[25]

As direct evidence of jury discrimination can usually be obtained only from those responsible, the courts have relied heavily on statistics of racial and ethnic composition for circumstantial evidence of jury discrimination.[26] The Federal courts will not assume Negroes are any less fit for jury service than whites. On the contrary, discrimination is rebuttably presumed where no Negroes have served as jurors within human memory, or only 2 or 3 have served within 30 years.[27] Statistics have been relied upon most heavily in deciding claims that jury service by minorities has been limited to token or quota representation. In deciding these cases, courts have usually looked to long-standing disparities between the percentage of minority citizens in the population at large and the percentage of minority trial or grand jurors.[28] (This is one of the two methods of mathematical analysis employed in this Study, see *infra*, p. 118.)

Jury discrimination has been presumed where 24.4% of the population, but only 9.8% of the veniremen, were Negroes;[29] where 21.1% of the population, but only 9.3% of the veniremen, were Negroes;[30] where 20% of the population, but only 5% of the veniremen, were Negroes;[31] where 38% of the population, but only 7% of the veniremen, were Negroes;[32] where 25.8% of the population, but only 3.7% of the veniremen, were Negroes.[33] But the Supreme Court has held, that, although it may prove that the jury selection process is imperfect, no presumption of discrimination is raised by the fact that 26% of the population, but only 15% of the veniremen, were Negroes.[34]

Unfortunately, none of these cases has established a definite and binding statistical standard nor even guidelines for arriving at such a standard. Some jury discrimination decisions have been based on the persistence of a wide disparity over 10, 15, or 20 years, while others have been decided on the basis of evidence for only 5, 3 or even 1 year. With respect to the statistics themselves, we know that a disparity of 2.4:1 or more between minority percentage of the population and minority percentage of the grand jury raises a presumption,[35] while a disparity of 5:3 probably does not.[36] But it is impossible to say anything more definite than that:

> ". . . very decided variations in proportions of Negroes and whites on jury lists from the racial proportion in the population, which variations are not explained and are long continued, furnish sufficient evidence of systematic exclusion of Negroes from jury service." [37]

A disparity of 2:1 or 2.5:1 has great significance when continued over 5 or more years, since (although the courts have not as yet seen fit to subsitute statistical science for their untutored intuition) such long continued disparities would be mathematically impossible if grand jury selection were fair.[38] The principles espoused by both judges and mathematicians would indicate that a long continued disparity of 3:1 or more between the percentage of minority grand jurors and the minority group percentage of the community raises a presumption of unconstitutional selection. A 3:1 disparity is "very decided." The Study has therefore adopted the view that such a disparity is sufficient to raise a presumptive showing of discriminatory selection. Two caveats to this should be noted, however: First, to raise a presumption is not to prove the fact. The effect of a statistical disparity is to place upon the jury selectors the duty to explain the disparity. No court will hold a jury to have been unconstitutionally selected, no matter how large the disparity, if a reasonable non-discriminatory explanation can be

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[25] *Cassell* v. *Texas*, and cases there cited. See also *Labat* v. *Bennett*, *supra*.

[26] See e.g., *Smith* v. *Texas*, 311 U.S. 128, 131 (1940), *Eubanks* v. *Louisiana*, 356 U.S. 584, 587 (1958).

[27] *Norris* v. *Alabama*, 294 U.S. 587 (1935), *Patton* v. *Mississippi*, 332 U.S. 463 (1947).

[28] Some courts have adopted further or other tests, such as comparing the ratio between the number of minority citizens and the number of minority jurors to the ratio between the number of white citizens and the number of white jurors. See, e.g., *Mitchell* v. *Johnson*, 250 F.Supp. 117 (M.D. Ala. 1966) (jury discrimination found where "almost all" eligible whites were on the jury list, but only one in twelve eligible Negroes). See also, *Leguillou* v. *Davis*, *supra* n. 22 at 117–119.

[29] *Sims* v. *Georgia*, 398 U.S. 404 (1967).

[30] *Whitus* v. *Georgia*, 385 U.S. 585 (1966).

[31] *Jones* v. *Georgia*, 398 U.S. 24 (1967).

[32] *Speller* v. *Allen*, 344 U.S. 477 (1953).

[33] *Labat* v. *Bennett*, 365 F. 2d 698, 716, 717 (5 Cir. 1966).

[34] *Swain* v. *Alabama*, 380 U.S. 202 (1965). In view of the criticism evoked by this opinion, its continued vitality is in some doubt. Finkelstein, "The Application of Statistical Decision Theory to the Jury Discrimination Cases," 80 Harv. L. Rev. 388 (1966); Kuhn, "Jury Discrimination: The Next Phase," 41 So. Cal. L. Rev. 235 (1968); Note: "Fair Jury Selection Procedures," 75 Yale L. J. 322, (1955); and Note: *"Swain* v. *Alabama:* A Constitutional Blueprint for the Perpetuation of the All-White Jury," 52 Va. L. Rev. 1157 (1966) are among the many acid critiques of various aspects of this decision. *Swain's* reasoning received little more than lip service from the 5th Circuit in its formulation of the latest and most coherent analysis of constitutional principle of jury selection, see p. 114, *supra*, and n. 24. It is perhaps significant that the Supreme Court refused to review the 5th Circuit cases, 386 U.S. 991 (1967).

[35] *Sims* v. *Georgia*, *supra*.

[36] *Swain* v. *Alabama*, *supra*.

[37] *Labat* v. *Bennett*, 365 F. 2d 698, 712 (5 Cir. 1966), quoting *Seals* v. *Wyman*, 304 F. 2d 53, 67 (5 Cir. 1962).

[38] See generally, Finkelstein (n. 343, *supra*). See also Kuhn, *supra*, at pp. 253 and 255, and Notes, *supra*, 75 Yale at 325–326, for criticism of the courts' mathematical naiveté.

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offered.[39] Second, the adoption of a 3:1 ratio as the constitutional litmus test should not be considered approval of some lesser ratio. Ratios of 2.5:1, 2:1 or even 1.5:1 represent extremely imperfect jury selection.

METHODOLOGY

I. Methodology of the Spanish-Surname Study

In March and April, 1968, college and law school students employed by CRLA gathered the names of grand jurors for the various counties denominated for Spanish-surname study.[40] The names were available from grand jury reports for past years, which are public records. But since grand jury reports for 1968 would not be available until 1969 and since some counties have not retained all of their grand jury reports, the instructions were wherever possible to obtain the names from county records. The students were instructed to obtain grand jury lists for at least ten of the years 1957–68. As it turned out, it was possible to obtain complete records for the 12 years 1957–68 from 15 counties.[41] Records for one or more years were missing or unobtainable in the other 7 counties, although in five, records for at least 10 years during the 1957–68 periods were available. In the remaining two counties, records for 8 and 7 years respectively were available.[42]

A gross identification of Spanish-surname grand jurors was made by having a computer match the grand jury list for each county against the list of Spanish surnames used in compiling the Spanish-surname analysis of the Census.[43] From this list were eliminated those names which might be Spanish but were far more likely to be of some other nationality.[44] The percentage of Spanish-surname grand jurors was then compared to the percentage of Spanish-surname persons in the general populace. A number of comments on methodology would seem in order.

The years studied were the ten most recent for which jury selection records were available in each county.[45] The figure of ten years was selected because the courts have generally held 10 or less years to provide sufficient evidence of continued jury selection patterns. The Study originally contemplated would have included jury selection in the past 15 or 20 years. This was altered to 10 years when examination of figures from a pilot county indicated that 20-year figures would not give an accurate representation of present jury selection. On the other hand, results of an examination of 30-year figures from another county were consistent in every respect with the computer's results from a study of eight years in that county.[46]

In concentrating on the actual juries rather than the jury venires (i.e., the list from which the juries were drawn) the Study departed from the general practice of the courts. In part, this was a result of the simple

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[39] See, e.g., *Billingsley v. Clayton*, 359 F.2d 13 (5 Cir. 1966) wherein the court found that any disparity which existed was explicable through the fact that many Negroes, apparently out of irrational fear, persistently avoided jury service.

[40] Attorneys employed by the CRLA Indian Division gathered all the materials for the two other counties wherein Indian grand jury service was examined. See Sec. II, *infra*.

[41] Twelve of these counties had records for grand juries in all twelve years. Three other counties had records for only 11 years because their 1968 grand juries had not yet been impaneled.

[42] The CRLA office in one of these counties was able eventually to obtain grand jury selection records for the years 1938–68. Although this occurred too late for inclusion in the computer operation, an examination of the years not examined by the computer reveals a consistent pattern for all 30 years.

[43] U.S. Department of Justice, *Spanish Name Book*, (M–156, 1963). This book of slightly over 10,000 Spanish names was prepared by the Immigration and Naturalization Service for use in handling Spanish-surname immigrants.

[44] The computer was programmed only to compare the names of the grand jury list to the names in the *Spanish Name Book*. It was not programmed to identify or make decisions about surnames which occur in Spanish and in other languages as well. Of the almost 5,000 grand jurors, the computer identified 225 as Spanish. In 64 of these 225 instances, the surname identified as Spanish is more common in a language other than Spanish. To some extent this difficulty arose because the computer programming did not differentiate between names on the basis of accent mark. Thus in 16 instances the computer identified as Spanish names which are Spanish only where an accent marks appears over the vowel in the last syllable, e.g., Martin, Simon, and Levin. Another problem was the fact that Spanish shares certain names in common with other languages, e.g., Adam, Daniel, Jordan, Miller, Savage. Where the surname more commonly appears in a language other than Spanish, we considered it non-Spanish unless the christian name of the grand juror was Spanish. (See Table X, *infra*.) Admittedly this method is likely to involve error since many Spanish-surname citizens bear non-Spanish christian names. But any factor of error is considerably less than would have been involved in blindly classifying as Spanish surnamed the eighteen Millers, three Adams, etc., the Spanish-surname status of whom was at best ambiguous.

[45] Recognizing that in a few counties records for one or more of the ten most recent years would not be available, the instructions were to get the records for all the years 1957–68. It was intended thereby to procure at least 10 years. Where one or two years in excess of that were obtained, they were included as well.

[46] Preliminary to conducting the Study, CRLA conducted a trial run in one representative county as the basis upon which to determine the methods and procedures to be adopted for the other counties. Because of its large Spanish-surname population, Imperial County was selected as the pilot county. As indicated in Tables II, III, IV, Imperial County's record for the years 1957–68 compared favorably with that of many other counties studied. Sixteen Spanish-surname grand jurors served during those years (one or more in 1958, 1959, 1961, and 1962–68), the Spanish-surname percentage of the grand jury being 7 percent—a disparity of 3.1 : 1. Imperial County's record in the years preceding those studied was very different. Only one Spanish-surname grand juror served in the period 1949–56. Thus, while the ratio of disparity for the twelve most recent years was 3.1 : 1, the ratio over the entire twenty-year period was 5 : 1. Obviously consideration of the time period as a whole would obscure the fact that the pattern of jury selection altered radically after 1957.

In contrast to Imperial, Monterey County's jury selection pattern is consistent for the past 30 years. According to the 1960 Census figures adopted by the Study 9.7 percent of Monterey County's population eligible for jury service were Spanish surnamed. One Spanish-surname person served in the 8 years (1961–68) covered in the Study. Examination of grand jury service in the years 1938–68 by the CRLA office in Monterey County revealed that this grand juror was of Spanish rather than Mexican descent—and that no Mexican-American had served as a grand juror in those 30 years.

practical fact that we had access to grand jury lists but not to venire lists. The names of the grand jurors are printed in the grand jury reports (and in most cases are also easily available from the county clerks) while the venire lists, if retained at all, are buried deep in the county files. Courts prefer venire to jury lists for the purpose of examining into trial jury discrimination. This is because the composition of the trial jury which eventually sits in any case is determined as much by the arbitrary process of attorney peremptory challenge as by the venire selection practices of the jury commissioners. This factor is inapplicable to a grand jury since there are no peremptory challenges to grand jurors.[47] If a choice must be made betwen the list of veniremen and the list of grant jurors eventually serving, the latter is preferable. It allows opportunity to determine whether the ethnic or racial composition of the original venire list was altered in the composition of a grand jury. Most advantageous of course would be examination of both the venire list and the grand jury list, particularly since the venire list is larger than the grand jury list, allowing a better sample for purposes of statistical computation. There is no reason, however, to believe that the results of the Study would have been significantly different if venire rather than grand jury selection figures had been used.

A number of difficulties were encountered in arriving at the relevant figures for the general population of each county and for the Spanish-surname population of each county. It must be remembered that the relevant figure is not the whole population, but only those eligible to serve as grand jurors. Obviously, it would be impractical to attempt to exclude from the calculations as to each county persons ineligible because of conviction of an infamous crime, jury service in the preceding year, or occupational exemption.[48] It is impossible, however, to ignore two qualifications which exclude a substantial percentage of the general population from jury service: the citizenship and minimum age requirements. These are especially important with reference to jury service by the Spanish surnamed, because this group generally contains more non-citizens and more children than the population as a whole.

Since the 1960 Census did not break down California's Spanish-surname population by age and county, we were forced to use figures undifferentiated by age for the Spanish-surname population. This undoubtedly resulted in an exaggeration of the eligible Spanish-surname population; according to the 1960 Census, 46.9% of the Spanish-surname population was below 20 years of age, while only 36.9% of the total white population was below that age. Any error involved here should, however, be more than offset by the fact that we were unable to get population figures later than the 1960 Census. The figures for the 1960 Census, which were collected as late as possible before publication, probably represent a fairly accurate figure of the Spanish-surname and total population for the years 1957–62. Thereafter, they can provide a rough approximation. Unless Spanish-surname population trends for the years 1960–68 widely differed from those for 1950–60, Spanish-surname population since 1960 will have increased at almost twice the rate of total population increase.[49] Thus, if anything the Study's computations underrepresent (rather than overrepresent) the eligible Spanish-surname population in each county.

The Study was able to be much more precise in excluding that part of the Spanish-surname population ineligible because of lack of American citizenship. In 1960, 80% of California's Spanish-surname population were born in the United States and therefore automatically citizens.[50] Of the foreign born 20%, an unidentifiable number are citizens by reason of nationality of their parents or naturalization subsequent to birth. Non-Mexican Spanish-surname aliens, residing here as pre-citizens, students, or on various special employment visas, make up a small percentage of the Spanish-surname non-citizen population. The vast majority of Spanish-surname aliens are Mexican nationals[51] who were accorded permanent or semi-permanent visas during the period of relatively free importation of Mexican labor previous to 1965.[52] The Study attempted to exclude non-citizens from its computation of the eligible Spanish-surname population by not considering in that population any persons born in Mexico. As a result of this exclusion, the Spanish-surname percentages of the eligible population as computed in the Study are considerably smaller than the Spanish-surname population percentages as computed by the Census.[53]

The Study's exclusion of only those born in Mexico doubtless fails to exclude some Spanish-surname aliens who were born in countries other than Mexico. This should be far more than compensated for, however, by the blanket exclusion of the Mexican born, many of whom have attained U.S. citizenship subsequent to their birth. Once again, the Study's computations probably underrepresent the total eligible Spanish-surname population in each county.

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[47] Attorney challenges are specifically prohibited by Penal Code § 910.

[48] These disqualifying factors would seem to fall with approximately equal effect on all ethnic groups. In any case, the number of persons excluded for these reasons is very small.

[49] "While the total California population increased by about one-half (48.5 percent) during the decade 1950–60, the Spanish-surname population grew much more rapidly, by 88.1 percent." (Cal.) EEPC, *Californios of Spanish Surname*, p. 11 (1964) (book published by and available from California Fair Employment Practices Commission).

[50] *Ibid.* California's 1950 Spanish-surname population was 78 percent native born.

[51] Eighty percent of the Spanish-surname persons born outside the United States were born in Mexico, *ibid.*

[52] The immigration of Mexican nationals for employment purposes was sharply curtailed when Congress amended 8 U.S.C. 1182(a)(14) in 1964.

[53] The effect varied widely across the State, Spanish-surname persons born in Mexico constituted almost half of the Spanish-surname population of Imperial County which borders on Mexico. On the other hand, they constituted little over 12 percent of the Spanish-surname population in Colusa County, approximately 700 miles north of the border.

II. Methodology of the Indian Study

All population and grand jury statistics involved in the examination of grand jury service by California Indians were gathered by the CRLA Indian Division. The two counties studied, Lake and Inyo, are among California's smallest rural counties, neither of them having a 1960 population in excess of 15,000. Since the Indian population of Lake County is approximately 750 and of Inyo County is approximately 1,200, it was possible to determine how many Indians had served as grand jurors by submitting the grand jury lists to persons familiar with the names of every Indian in the county.[54]

In both counties, the figures adopted for Indian population and for Indian percentage of the total population represent approximations. The Chairman of the Bishop-Piaute Board of Trustees estimated that the Indian population of Inyo County was approximately 1,200 as of 1968. It is probable that that population has maintained itself at approximately the same level since 1957. Thus in 1957–60, the Indian population was a little more than 10% of the total population which was 11,684 according to the 1960 Census. But it is impossible to state with any certainty what the present non-Indian population of Inyo County is, except that it may reasonably be assumed to have increased since 1960. The CRLA Indian Division estimates the present Indian population of Lake County at between 500 and 1,000 and the present total population of Lake County at around 18,000. Taking 750 as the Indian population, this would give an Indian population of a little over 4%. The roughness of the Lake County statistics would seem of little moment since not once in the 10 years studied did an Indian serve as a grand juror. (I am informed that, since the CRLA Indian Division's investigation, 5 Indians have been examined as veniremen for the 1968 Lake County grand jury. The 1968 grand jury has not yet been selected.)

III. Mathematical Methodology of the Study

The test most commonly employed by the Courts in examining discrimination against minority jurors has been to compare the percentage of minority citizens in the population at large to the percentage of minority jurors.[55] Table II and the discussion under Analysis of the Study, *infra.*, show the results of this comparison (expressed as a ratio for each county studied).

Column D of Table III represents another simple mathematical measure of discrimination. Assume that 26% of the population, but only 15% of the venireman, are Negroes. Eleven percent of the total population (constituting almost 44% of the Negro population) has apparently been excluded from consideration for jury service.[56] The percentage of minority group population excluded from consideration for jury service, figured as in the foregoing example, is shown for each county.

In addition to the simple mathematical computations described above, the ethnic composition of the grand juries was analyzed in the light of statistical decision theory by Professor Jerome Kirk.[57] The basis of this statistical decision analysis is not markedly different from the theories used intuitively by the courts in adjudicating jury discrimination claims. The statistician adopts a hypothesis which he then tests against independently verifiable facts. In this Study the hypothesis is that the minority group percentage of the grand juries resulted from nondiscriminatory (i.e., random) selection. The independently verifiable fact is the Spanish-surname percentage of the general population. If the hypothesis is inconsistent with the independently verifiable fact, the hypothesis is untrue. Thus, if the hypothesis is true, if 7% of the Imperial County grand jurors were Spanish surnamed, approximately[58] 7% of the general population of Imperial County should be Spanish surnamed. If it turns out that 21.8% of the Imperial County population is Spanish-surnamed, the hypothesis is wrong; that is to say, there was discrimination in the selection of grand jurors.

While (as can be seen from the preceding exposition) parallel theories are followed by the statisticians and the courts, differences appear in the application of those theories. The courts recognize that, short of an infinite sample, random selection will not invariably lead to exact equivalency between minority percentages of the general populace and minority percentages of the jurors. For example, in a sample of 190 grand jurors over ten years, random selection might produce a minority group grand jury percentage of 7% from a general population having a minority group percentage of 7.4%. This was apparently what the Court meant in saying that, where, over a ten-year period, 26% of the population, but only 15% of the veniremen, were Negroes, jury selection had been imperfect, but not discriminatory.[59] The criticism which has been heaped upon this statement stems from the fact that the Justices relied upon intuition rather than mathematics in holding this variation consistent with random selection. In fact, no statistical variation consistent with random selection could explain the variation in *Swain*, given the size of the sample involved.[60]

The statistician relies on mathematics rather than intuition to determine whether a particular statistical

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[54] In Lake County, the grand jury list was examined by more than 35 adult Lake County Indians. In Inyo County it was examined by 2 members of the Bishop-Piaute Board of Trustees, the governing body of the three Indian reservations in the County. This method of identification is one frequently used in cases from rural Southern counties.

[55] *Supra* n. 29–32.

[56] Both example and method of analysis are taken from *Swain v. Alabama,* 380 U.S. 202, 209 (1965). That opinion has come under sharp criticism for a seemingly elementary error of mathematics: referring to the 11% figure (without mentioning the 44%) as the percentage of Negro population excluded. See n. 38, *supra.*

[57] See n. 4, *supra,* and accompanying text. Professor Kirk's full report, including both his figures and his narrative explanation of their derivation, are attached as Appendices.

[58] The approximation relates to the standard deviation factor discussed *infra,* at p. 119.

[59] *Swain v. Alabama, supra,* 380 U.S. at 208.

[60] See n. 34, *supra.*

variation is explicable within, and consistent with, random selection. Statisticians have evolved standard deviation tables by the use of which they can easily determine whether the variation between the percentage of minority grand jurors and the percentage of minority population is consistent with random selection. It is necessary only to compute in a formula based upon a standard deviation figure derived from a table covering comparisons of the type, and samples of the size, used in the Study.[61] This is the computation involved in Table IV, particularly column C "maximum percentage of Spanish-surname population consistent with random choice of Spanish-surname grand jurors." Where discrimination exists, determining its extent by some meaningful quantitative measure permits comparison among the counties to determine which are the worst offenders. To some extent such a comparison could be made on the basis of the difference between the actual Spanish-surname percentage of the general population and the maximum Spanish-surname percentage of the population consistent with random choice. (Columns D and C of Table IV.) This would be a fairly clumsy measure, however, and one not easily translated into a familiar scale.[62]

Table IV represents calculations which Kirk suggests provide a more vivid index of the quantity of discrimination for each of the counties studied. His figures show the percentage of Spanish-surname population in each county which must have been excluded from the population in order to make the observed number of Spanish-surname grand jurors consistent with the hypothesis that random selection of grand juries had occurred.[63] This figure is thus an inverse index of discrimination. For example, where (as in Lake County) a total discrimination has occurred, in that there is some minority percentage of the general population but no minority grand jurors, the figures in Table IV would be 100. If on the other hand, the percentage of minority grand jurors was the same (or the same within the statistical deviation formula) as the minority group percentage in the general population, the figures would be 0.

For those who desire a more detailed explanation of the statistical method, Professor Kirk's analyses are attached as Appendices. As his conclusions are set out in Tables III and IV, it is unnecessary to belabor them here. Suffice it to say that in every one of the 20 counties studied[64] the underrepresentation of Spanish-surname persons on the grand juries exceeded any figure which could be accounted for on the basis of random selection. In other words, insofar as statistical decision analysis sheds light on the question, the grand jury selection patterns in every one of the counties studied were characterized by constitutionally prohibited discrimination on the basis of race or ethnic background.

ANALYSIS OF THE STUDY

The Study's findings as to the racial and ethnic composition of California grand juries are, to say the least, startling. California is neither in geography nor in spirit a state of the Deep South and its history, at least in the Twentieth Century, is not dominated by mistreatment of racial or ethnic minorities.[65] Yet the number and proportion of minority persons serving as grand jurors in the counties studied is not much, if any, greater than the proportion of Negroes serving on grand juries in the Deep South. If the Study is correct in asserting that a 3:1 disparity will raise presumption of unconstitutional selection, such a presumption would be raised in 17 of the 22 counties studied. In 5 of those counties the disparity between minority population and minority grand jury service was more than 10:1. In one county no Indian served on the grand jury in all of the years studied; in 3 counties only one Spanish-surname person served in all the years studied;[66] in still another county only two served. In no county—including even those counties with less than a 3:1 disparity—did the number of minority group grand jurors approach, equal or exceed the minority group percentage of the population. On the contrary, in every county studied, the percentage of the minority group grand jurors was significantly less than the minority group percentage of the general population, the disparity varying from substantial in the best counties to grotesque in the worst.

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[61] See p. 131 *et seq.* and Tables included therein, for an explanation of this standard variation computation.

[62] The reason for not following the precise model set out by Finkelstein is that he used the percentage of Negroes appearing as veniremen as a constant and computed therefrom the probability of various percentages of Negroes in the population. In this Study the population percentage remained constant for the years studied and the percentage of Spanish-surname persons on each grand jury varied.

[63] Table IV represents the same calculation set out in column D of Table III and discussed at p. 118 above. The difference is that column D of Table III was derived from simple mathematical computation while Table IV was derived from computation which included the statistical variation formula.

[64] Professor Kirk's analysis relates only to the Spanish-surname study, not to the two counties wherein grand jury service by Indians was examined.

[65] California had comprehensive legislation prohibiting discrimination in public accommodations and services as early as 1905. California Civil Code §§ 51–54. California enacted fair employment legislation in 1959 (Labor Code § 1410 *et seq.*) and fair housing legislation in 1963 (Health and Safety Code § 35700 *et seq.*).

On the other hand, California's history includes important instances of discrimination against varied racial and ethnic minorities. See, e.g., *Reitman* v. *Mulkey*, 387 U.S. 369 (1967), *Omaya* v. *State of California*, 332 U.S. 633 (1948), *Fujii* v. *State of California*, 38 Cal. 2d 718, 242 P. 2d 617 (1952), *Perez* v. *Sharp*, 32 Cal. 2d 711, 198 P. 2d 17 (1948). See also Pitt, *The Decline of the Californios*, U. of Calif. Press, 1966, Sandmeier, *The Anti-Chinese Movement in California*, U. of Ill. Press 1939, Daniels, *The Politics of Prejudice*, U. of Calif. Press 1961, Carranco, "Chinese Expulsion from Humboldt County," 30 Pac. Hist. Rev. 329 (1961).

[66] In one of these three counties, Monterey, a subsequent check showed that that grand juror was Spanish rather than Mexican-American. Apparently no Mexican-American served in any of the 30 years (1938–68) checked.

We have so far been considering minority grand jury service in each county for all the years combined. Another way of looking at the question is to consider minority group service on each individual grand jury.[67] Preliminarily it should be noted that, even under random selection, the percentage of minority group grand jurors for any year will not necessarily be precisely the same as the minority percentage of the population. There is in fact no reason to suppose that even one minority grand juror will be selected in any particular year. Neutral and random selection will probably result in variation from year to year. In some years the percentage of minority grand jurors should equal the minority percentage of the population; in other years it should be less; in still other years it should be more. But the pattern of jury selection in the counties studied was radically different. The Study included analysis of 224 grand juries in 20 counties in the 12-year period of 1957–68. In 18 of those 224 grand juries, the percentage of Spanish-surname grand jurors approximated or exceeded the Spanish-surname percentage of the general population. In the other 206, the Spanish-surname percentage of grand jurors fell markedly below the Spanish-surname percentage of the general population. In 12 of the 20 counties studied (Colusa, Fresno, Imperial, Kern, Kings, Madera, Merced, Monterey, San Benito, San Bernardino, San Joaquin, and Ventura) the Spanish-surname percentage of the grand jurors never reached or exceeded the Spanish-surname percentage of the general populace in any of the years studied. With two exceptions, the other 8 counties were little better.[68]

Consideration of the grand juries on a year-by-year basis sheds light on our earlier statement that jury selection is decidedly imperfect even in the six counties with less than a 3:1 disparity.[69] In three of those counties, the percentage of Spanish-surname grand jurors was markedly below the Spanish-surname percentage of the population in each of the 12 years studied. The best of the six counties was Santa Clara wherein the percentage of Spanish-surname grand jurors equalled the Spanish-surname percentage of the general population in six of the years studied and was markedly below it in the other six years.

As 11% of the general population of Santa Clara County is Spanish-surnamed, random selection would dictate that 25 of the 228 jurors who served in the years 1957–68 be Spanish-surnamed. In fact, only 13 were. The inconsistency is more extreme in the other five counties which had less than a 3:1 disparity. During the years studied, random selection would dictate that 16 of the Alameda County grand jurors would have been Spanish-surnamed—6 were; 30 Ventura County grand jurors should have been Spanish surnamed—13 were; 28 Merced County grand jurors should have been Spanish surnamed—13 were; 48 Kings County grand jurors should have been Spanish-surnamed—19 were; 13 Yolo County grand jurors should have been Spanish-surnamed—7 were.

It should be emphasized that the counties encompassed in this Study, including some of the counties with the worst records, were not confined to California's rural or "cow" counties. The counties encompassed in the Study included almost ¾'s of California's 1960 population, in large part because they included 10 of the state's 15 largest counties.[70] These counties prove to be leaders not only in population but in discrimination against minority grand jurors. The figures from Los Angeles County revealed a 5.1:1 disparity between minority group percentage of the population and minority group grand jury service. Although there were almost 500,000 Spanish-surname persons in Los Angeles County in 1960, only 4 of them served as grand jurors during the 12 years studied. Los Angeles County can scarcely compare, however, with California's fifth largest county, Orange, in which, during the same 12 years, only 1 Spanish-surname person saw jury service. This is a disparity of 15.8:1—a disparity fully comparable to the worst areas of the Deep South. San Bernardino, the state's seventh largest county, featured a 4.4:1 disparity, while the figure from Fresno, the eleventh largest county, was 11.5:1, Kern, the thirteenth largest county, had a 9.7:1 disparity and San Joaquin, the fourteenth largest county, a 6.8:1 disparity. On the other hand, it should be noted that the figures from Alameda, Santa Clara, and Ventura, the state's third, sixth, and fifteenth largest counties respectively, were 2.7:1, 1.9:1, and 2.3:1 respectively.

We cannot of course anticipate what explanations the jury selectors might give based on circumstances peculiar to their particular counties. But we can evaluate the reason usually advanced to explain the dearth of minority grand jurors in California—that minority citizens cannot afford the time off from work necessitated by grand jury service.[71]

The fact that grand jurors are remunerated at only

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[67] The Study's analysis of individual grand juries is confined to the 20 counties in which Spanish-surname jury service was examined. We have no year-by-year figures on the two Indian counties, only figures for all the years combined. Since no Indian served as a Lake County grand juror in the 11 years studied, year-by-year analysis of that county would seem superfluous in any case.

[68] See Table X.

[69] It should be remembered that, under the more accurate standards of statistical analysis these counties could not pass muster at all.

[70] The 1960 Census ranked the California counties in the following order according to population: 1. Los Angeles (6,042,431), 2. San Diego (1,033,011), 3. Alameda (908,209), 4. San Francisco (740,316), 5. Orange (703,925), 6. Santa Clara (624,315), 7. San Bernardino (503,591), 8. Sacramento (502,778), 9. San Mateo (444,384), 10. Contra Costa (409,030), 11. Fresno (365,945), 12. Riverside (306,191), 13. Kern (291,984), 14. San Joaquin (249,989), 15. Ventura (199,138). The Study included the counties ranking first, third, fifth, sixth, seventh, eleventh, twelfth, thirteenth, fourteenth, and fifteenth. California's 1960 population was almost 16 million, while the total population of the counties studied was 11,121,075. (These are the "raw" population figures from the 1960 Census, not figures adjusted by the exclusion of the Mexican born.)

[71] This explanation was virtually the only one offered by judges, district attorneys, and all other testifying before the California Assembly Interim Committee on Government Efficiency and Economy, see, e.g., Part I, p. 5 (Sept. 27, 1967), Part II, p. 21 (Oct. 16, 1967), Part III, pp. 29, 91 (Oct. 31, 1967).

$5.00 [72] per day would undoubtedly make service difficult in some counties for a minority person who must support a large family on a meager income. The county in which this difficulty would be most pronounced is Los Angeles, whose grand jury sits for a substantial proportion of each year. But it is scarcely credible that over a 12-year period the Los Angeles County jury selectors could have found only 4 persons financially able to serve as jurors among the county's almost 500,000 eligible Spanish-surname persons. It is inconceivable that in Colusa, Monterey and Orange Counties respectively, the jury selectors could find only one Spanish-surname person financially able to serve.

Indeed, the financial inability argument is simply inapplicable to Colusa and the other eight counties in the Study whose population is less than 100,000.[73] Grand jury service in such counties is limited to a total of a few weeks, with each date arranged primarily for the convenience of the various grand jurors. The financial inability argument is of little weight in the 19 counties studied which are primarily or in large part agricultural.[74] Although the amount of time required varies from county to county, in none of these agricultural counties is grand jury service nearly as arduous a responsibility as it is in Los Angeles, Alameda, or Orange Counties. Again, in these counties dates of grand jury service are arranged to suit the convenience of the majority of the grand jurors. In many cases the dates of service are tailored to avoid peak agricultural seasons so that the growers on the jury will be able to attend. It would therefore involve little or no departure from traditional dates for grand jury service to be economically feasible for any of the large numbers of Spanish-surname persons in each of these counties who, as agricultural farm laborers, are seasonally unemployed. A remuneration at even $5.00 a day would actually be a financial boon for such persons during the off seasons. And that sum would be a desirable wage for the large number of Spanish-surname persons in any of the counties studied who, by reason of disability, age or unemployment, are welfare recipients. The Study's findings make it difficult to take the financial inability argument seriously. In 1960, Monterey County had an eligible Spanish-surname population almost 4 times as great as its neighbor San Benito County. How does the financial inability argument explain the fact that San Benito had 20 times as many Spanish-surname grand jurors in 12 years as Monterey had in 30 years? Nineteen Spanish-surname grand jurors served in Kings County during the years 1957–68. Three and two (respectively) grand jurors served in neighboring Colusa and Kern Counties during the same years. Is the primarily farm worker Spanish-surname population of one county so much more wealthier than the primarily farm worker Spanish-surname populations of the other two counties? How can financial considerations explain the fact that Fresno County had more than twice as many Spanish-surname persons but less than ¼ as many Spanish-surname grand jurors as did Ventura County for the same years? Grand jury service does not represent any appreciably greater hardship for the Spanish surnamed in the counties studied. Financial inability simply cannot explain the marked disparities between the percentage of Spanish-surname grand jurors and the Spanish-surname percentage of the population.

Another possible explanation for the disparity might be that Spanish-surname persons are more likely to be disqualified than are non-Spanish-surname persons for failure to have "a sufficient knowledge of the English language." [75]

Although we have been unable to locate any concrete figures, it is probably true that more Spanish-surname than non-Spanish-surname people speak only a foreign language. But, by the same token, the non-English speakers are more likely to be aliens (who are automatically disqualified for jury service) than citizens. None of the witnesses at the recent California Assembly Hearings on the grand jury advanced ignorance of English as an explanation for low minority grand jury service; nor is this reason advanced by any of the available studies on the California grand jury system. In the absence of any expression by judges and others familiar with grand jury selection that ignorance of English is a major factor in excluding minority group participation, there seems no reason to believe that it is.

The general explanations offered for the marked underrepresentation of Spanish-surname and Indian grand jurors in the counties studied are not convincing. It is, of course, possible that explanations might be given based on peculiar circumstances in each county. What these might be we cannot venture to guess. Most extraordinary conditions indeed would be required to explain the disparities of 16.16:1, 15.8:1, 13.9:1, 11.5:1, 9.7:1, 7.1:1, and 6.8:1 which exist in Colusa, Orange, Monterey, Fresno, Kern, Madera and San Joaquin Counties respectively. All in all, the results of the Study justify Assemblyman McMillan's conclusion:

> "We are convinced that the selection and composition of county grand juries does not meet basic standards of jury representativeness laid down by the U.S. Supreme Court as early as 1940 in the case of *Smith v. Texas*." [76]

This is not necessarily to conclude that the judges or the jury selectors have been guilty of prejudice or have

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[72] Penal Code § 890.

[73] As of the 1960 Census, Colusa, San Benito, Tulare, Inyo and Lake Counties had populations of less than 25,000; Madera and Kings Counties had populations of less than 50,000; Yolo, Merced and Imperial Counties had populations of less than 100,000.

[74] Colusa, Fresno, Imperial, Inyo, Kern, Kings, Lake, Madera, Merced, Monterey, Riverside, San Benito, San Bernardino, San Joaquin, Santa Barbara, Santa Clara, Tulare, Ventura, Yolo.

[75] C.C.P. 198. As noted above, this requirement refers to a knowledge of spoken English, not literacy in English. The knowledge of English need not be perfect, so long as the Court may find that the juror has substantial understanding. *People v. Davis*, 3 Ca.U. 424, 36 P. 96.

[76] Hearings of the California Assembly Interim Committee on Government Efficiency and Economy, Part I (Sept. 27, 1967) pp. 1–2.

consciously excluded minority persons. But it is to say that they have failed to do their constitutional duty to select grand juries which represent a true cross-section of the community.[77] And they have failed to heed the constitutional command that those who choose jurors from among their own acquaintances (or their acquaintances' acquaintances) must know, or take steps to acquaint themselves with, minority groups in the population.[78]

If prejudice has affected grand jury selection in the counties studied, it is probably at least as much economic and social as racial or ethnic prejudice. It is no secret that, particularly in California's rural counties, the majority of the Spanish-surname and Indian populations are poor. Whether because of prejudice, or because the judges simply are not acquainted with them, low-income persons almost never appear on California grand juries. The information CRLA gathered as to occupations of grand jurors in the counties studied[79] confirms another of Assemblyman McMillan's observations:

> "The probability that a wage earner, a skilled, semi-skilled or unskilled worker appear on a county grand jury in California is so small as to be non-existent. The same goes for any poor person. They are systematically excluded because of the current method of selecting county grand jurors." [80]

The judges can take no comfort in the thought that their exclusionary practices are directed at low-income rather than minority group persons. The Constitution requires grand jury selection aimed at securing a fair cross-section of the community and prohibits exclusion on economic grounds as much as it prohibits exclusion on racial or ethnic grounds.[81] And economic discriminations which result in gross ethnic or racial unbalances are particularly forbidden.[82] Perhaps the judges, whether consciously or not, are acting on a belief that low-income persons will not make intelligent or properly oriented grand jurors. If so, they are acting on a belief which is antithetical to the principles enunciated by the Constitution. Doubtless grand juries which are fully representative of all ethnic and economic elements of the communities they serve might adopt radically different viewpoints from those expressed by the grand juries as presently constituted. Grand juries on which farm workers sit are likely to expend more energy in investigating grower violations of agricultural health and safety laws than in recommending that county officials reject Federal funds made available for job training of the poor. Grand juries on which welfare recipients sit are likely to take a more sympathetic view of Federal welfare expenditures for the poor and a less sympathetic view of Federal welfare expenditures (agricultural subsidies) for the rich. The expounding of such views by California grand juries would indeed be revolutionary. "Our Constitutional idea of equal justice under law is thus made a living truth." [83]

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[77] See n. 24, *supra*, and accompanying text.

[78] See n. 25, *supra*, and accompanying text.

[79] Wherever possible the occupation of each grand juror was obtained from the city directories published for each county by the Polk Company. But city directories are published only for the largest cities in each county. They do not include persons who live in smaller cities in the counties or in unincorporated areas.

Taking counties at random, our records for the 1968 Santa Barbara grand jury include occupations for 7 of its 19 members. They were respectively: Manager of a bank; manager of a club; real estate salesman; public relations counselor; agent in charge of an insurance office; owner of a local business; and manager of the local outlet for a national appliance manufacturer.

Our records for the 1968 Los Angeles grand jury included occupations for 4 of its 23 members. They were, respectively: wife of the owner of a pharmacy; wife of a physician; wife of a builder; manager of a corporation.

Our records for the 1968 Kern County grand jury included occupations for 12 of its 19 members. They were, respectively: a merchant; the wife of a farmer; a farmer; a realtor; a combination realtor and insurance agent; a restaurant owner; a trucking company president; the editor of a labor journal; a grain company manager; a union executive; a production company manager; and a bank president.

[80] Hearings of the California Assembly Interim Committee on Government Efficiency and Economy, Part I (Sept. 27, 1967) p. 2.

[81] See n. 22, *supra*, and accompanying text.

[82] As the court said in *Labat* v. *Bennett:*

> "It is common knowledge in New Orleans and certainly the Orleans Parish jury commissioners know that the systematic exclusion of daily wage earners from jury service must result in a disproportionately small number of Negroes in the jury wheel and in the final venire. Thus 47 percent of all Negro workers in New Orleans were excluded from the jury system.
>
> "The system was neutral, principled and foolproof. No Negro ever sat on a grand jury or a trial jury in New Orleans Parish." (365 F. 2d at 724–725).

[83] *Cooper* v. *Aaron*, 358 U.S. 1, 20 (1958).

TABLE I.—*Data upon which this study is based*

County	Total population	Spanish-surname population	Total population less Mexican born	Spanish-surname population less Mexican born	Number of grand juries studied	Years studied	Total number of grand jurors found	Number of Spanish-surname grand jurors
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Alameda	908, 209	67, 866	902, 993	62, 650	12	1957–68	228	6
Alameda nominees	908, 209	67, 866	902, 993	62, 650	11	1957–59, 1961–68	637	12
Colusa	12, 075	1, 152	11, 912	989	10	1957–58, 1960, 1962–68	190	1
Fresno	365, 945	61, 418	355, 957	51, 430	12	1957–68	228	3
Imperial	72, 105	23, 850	61, 639	13, 384	12	1957–68	228	16
Kern	291, 984	29, 219	287, 695	24, 930	12	1957–68	228	2
Kings	49, 954	11, 656	48, 438	10, 140	12	1957–68	228	19
Los Angeles	6, 042, 431	576, 716	5, 943, 628	477, 913	12	1957–68	248	4
Madera	40, 468	6, 225	39, 522	5, 279	11	1957, 1959–68	209	4
Merced	90, 446	13, 429	88, 808	11, 791	11	1958–68	208	13
Monterey	198, 351	23, 118	193, 952	18, 719	8	1961–68	152	1
Orange	703, 925	52, 576	695, 366	44, 017	12	1957–68	228	1
Riverside	306, 191	36, 224	297, 798	27, 831	12	1957–68	228	8
San Benito	15, 396	4, 642	14, 671	3, 917	12	1957–68	228	20
San Bernardino	503, 591	60, 177	495, 659	52, 245	11	1957–67	209	5
San Joaquin	249, 989	30, 585	245, 650	26, 246	10	1958–60, 1962–68	190	3
Santa Barbara	168, 962	22, 267	164, 720	18, 025	12	1957–68	228	7
Santa Clara	642, 315	77, 755	634, 537	69, 977	12	1957–68	228	13
Tulare	168, 403	27, 387	163, 605	22, 589	12	1957–68	228	9
Ventura	199, 138	33, 980	190, 394	25, 238	12	1957–68	228	13
Yolo	65, 727	7, 757	64, 167	6, 197	7	1957, 1959, 1962, 1964–67	133	7
INDIANS								
Inyo	11, 684	1, 200	----------	----------	12	1957–68	228	4
Lake	*18, 000	750	----------	----------	11	1957–67	209	0

*Estimate for 1968; *cf.* text, p. 118

TABLE II.—*Comparison of percentage of Spanish-surname among grand jurors and population*

County	Number of grand juries studied	Spanish-surname percentage in population	Percentage of Spanish-surname grand jurors	Ratio of percentage of Spanish-surname in population to percentage of Spanish-surname grand jurors
(a)	(b)	(c)	(d)	(e)
Alameda	12	6.9	2.6	2.7:1
Alameda nominees	11	6.9	1.9	3.6:1
Colusa	10	8.3	0.5	16.6:1
Fresno	12	14.5	1.3	11.5:1
Imperial	12	21.8	7.0	3.1:1
Kern	12	8.7	0.9	9.7:1
Kings	12	21.0	8.3	2.5:1
Los Angeles	12	8.1	1.6	5.1:1
Madera	11	13.4	1.9	7.1:1
Merced	11	13.6	6.3	2.2:1
Monterey	8	9.7	0.7	13.9:1
Orange	12	6.3	0.4	15.8:1
Riverside	12	9.4	3.5	3.7:1
San Benito	12	26.4	8.8	3.0:1
San Bernardino	11	10.5	2.4	4.4:1
San Joaquin	10	10.9	1.6	6.8:1
Santa Barbara	12	10.9	3.1	3.9:1
Santa Clara	12	11.0	5.7	1.9:1
Tulare	12	13.8	4.1	3.4:1
Ventura	12	13.3	5.7	2.3:1
Yolo	7	9.7	5.3	1.8:1
INDIANS				
Inyo	12	10.0	1.8	5.5:1
Lake	11	4.0	0	∞

TABLE III.—*Percentage and minimum percentage of Spanish-surname excluded from random selection of grand jurors*

County	Percentage of Spanish-surname in population = Z	Percentage of Spanish-surname grand jurors = P	Percentage of Spanish-surname excluded from random selection of grand jurors $D=\frac{Z-P}{Z}$	Minimum percentage of Spanish-surname excluded from random selection of grand jurors (See Table IV, col. (e)) $E=\frac{100\ (Z-Y)}{Z-\frac{ZY}{100}}$
(a)	(b)	(c)	(d)	(e)
Alameda	6. 9	2. 6	62. 3	36
Alameda nominees	6. 9	1. 9	72. 5	58
Colusa	8. 3	0. 5	94. 0	83
Fresno	14. 5	1. 3	91. 0	81
Imperial	21. 8	7. 0	67. 9	50
Kern	8. 7	0. 9	89. 7	77
Kings	21. 0	8. 3	60. 5	46
Los Angeles	8. 1	1. 6	80. 2	62
Madera	13. 4	1. 9	85. 8	71
Merced	13. 6	6. 3	53. 7	30
Monterey	9. 7	0. 7	92. 8	80
Orange	6. 3	0. 4	93. 7	82
Riverside	9. 4	3. 5	62. 8	39
San Benito	26. 4	8. 8	66. 7	49
San Bernardino	10. 5	2. 4	77. 1	59
San Joaquin	10. 9	1. 6	85. 3	69
Santa Barbara	10. 9	3. 1	71. 6	52
Santa Clara	11. 0	5. 7	48. 2	24
Tulare	13. 8	4. 1	70. 3	51
Ventura	13. 3	5. 7	57. 1	35
Yolo	9. 7	5. 3	45. 4	11
INDIANS				
Inyo	10. 0	1. 8	82. 0	----------
Lake	4. 0	0	100. 0	----------

TABLE IV.—*Statistical probability of observed percentage of Spanish-surname in population on hypothesis of random selection*

County	Percentage of grand jurors of Spanish-surname	Highest Spanish-surname percentage of population consistent with observed percentage of Spanish-surname grand jurors if hypothesis of random selection is correct $Y=P+1.645\left(\sqrt{\frac{P(1-P)}{N}}\right)$	Observed Spanish-surname percentage in population	Minimum percentage of Spanish-surname population which must have been excluded to reconcile observed percentage of Spanish-surname grand jurors with actual Spanish-surname percentage in population if hypothesis of random selection is correct $E=\frac{100(Z-Y)}{Z-\frac{ZY}{100}}$
(a)	(b)	(c)	(d)	(e)
Alameda	2. 6	4. 4	6. 9	36
Alameda nominees	1. 9	2. 8	6. 9	58
Colusa	0. 5	1. 5	8. 3	83
Fresno	1. 3	2. 6	14. 5	81
Imperial	7. 0	10. 7	21. 8	50
Kern	0. 9	2. 0	8. 7	77
Kings	8. 3	11. 4	21. 0	46
Los Angeles	1. 6	3. 0	8. 1	62
Madera	1. 9	3. 5	13. 4	71
Merced	6. 3	9. 0	13. 6	30
Monterey	0. 7	1. 9	9. 7	80
Orange	0. 4	1. 2	6. 3	82
Riverside	3. 5	5. 5	9. 4	39
San Benito	8. 8	11. 9	26. 4	49
San Bernardino	2. 4	4. 3	10. 5	59
San Joaquin	1. 6	3. 1	10. 9	69
Santa Barbara	3. 1	5. 0	10. 9	52
Santa Clara	5. 7	8. 3	11. 0	24
Tulare	4. 1	6. 1	13. 8	51
Ventura	5. 7	8. 3	13. 3	35
Yolo	5. 3	8. 5	9. 7	11

NOTES.—P=Percentage of grand jurors with Spanish-surnames. N=Total number of grand jurors. Z=Percentage of county population with Spanish-surnames.

TABLE V.—*Ratio and percentage of exclusion figures arranged in order of county population*

County (a)	Population (b)	Ratio (c)	Percentage of exclusion (d)
Los Angeles	6, 042, 431	5. 1:1	80. 2
Alameda	908, 209	2. 7:1	62. 3
Alameda nominees	908, 209	3. 6:1	72. 5
Orange	703, 925	15. 8:1	93. 7
Santa Clara	642, 315	1. 9:1	48. 2
San Bernardino	503, 591	4. 4:1	77. 1
Fresno	365, 945	11. 5:1	91. 0
Riverside	306, 191	3. 7:1	62. 8
Kern	291, 984	9. 7:1	89. 7
San Joaquin	249, 989	6. 8:1	85. 3
Ventura	199, 138	2. 3:1	57. 1
Monterey	198, 351	13. 9:1	92. 8
Santa Barbara	168, 962	3. 9:1	71. 6
Tulare	168, 403	3. 4:1	70. 3
Merced	90, 446	2. 2:1	53. 7
Imperial	72, 105	3. 1:1	67. 9
Yolo	65, 727	1. 8:1	45. 4
Kings	49, 954	2. 5:1	60. 5
Madera	40, 468	7. 1:1	85. 8
San Benito	15, 396	3. 0:1	66. 7
Colusa	12, 075	16. 6:1	94. 0

TABLE VI.—*Ratio and percentage of exclusion figures arranged in order of Spanish-surname population (less Mexican born)*

County (a)	Spanish-surname population less Mexican born (b)	Ratio (c)	Percentage of exclusion (d)
Los Angeles	477, 913	5. 1:1	80. 2
Santa Clara	69, 977	1. 9:1	48. 2
Alameda	62, 650	2. 7:1	62. 3
Alameda nominees	62, 650	3. 6:1	72. 5
Fresno	51, 430	11. 5:1	91. 0
San Bernardino	52, 245	4. 4:1	77. 1
Orange	44, 017	15. 8:1	93. 7
Riverside	27, 831	3. 7:1	62. 8
San Joaquin	26, 246	6. 8:1	85. 3
Ventura	25, 238	2. 3:1	57. 1
Kern	24, 930	9. 7:1	89. 7
Tulare	22, 589	3. 4:1	70. 3
Monterey	18, 719	13. 9:1	92. 8
Santa Barbara	18, 025	3. 9:1	71. 6
Imperial	13, 384	3. 1:1	67. 9
Merced	11, 791	2. 2:1	53. 7
Kings	10, 140	2. 5:1	60. 5
Yolo	6, 197	1. 8:1	45. 4
Madera	5, 279	7. 1:1	85. 8
San Benito	3, 917	3. 0:1	66. 7
Colusa	989	16. 6:1	94. 0

TABLE VII.—*Ratio and percentage of exclusion figures arranged by percentage of Spanish-surname population*

County (a)	Percentage of Spanish-surname population (b)	Ratio (c)	Percentage of exclusion (d)
San Benito	26.4	3.0:1	66.7
Imperial	21.8	3.1:1	67.9
Kings	21.0	2.5:1	60.5
Fresno	14.5	11.5:1	91.0
Tulare	13.8	3.4:1	70.3
Merced	13.6	2.2:1	53.7
Madera	13.4	7.1:1	85.8
Ventura	13.3	2.3:1	57.1
Santa Clara	11.0	1.9:1	48.2
San Joaquin	10.9	6.8:1	85.3
Santa Barbara	10.9	3.9:1	71.6
San Bernardino	10.5	4.4:1	77.1
Monterey	9.7	13.9:1	92.8
Yolo	9.7	1.8:1	45.4
Riverside	9.4	3.7:1	62.8
Kern	8.7	9.7:1	89.7
Colusa	8.3	16.6:1	94.0
Los Angeles	8.1	5.1:1	80.2
Alameda	6.9	2.7:1	62.3
Alameda nominees	6.9	3.6:1	72.5
Orange	6.3	15.8:1	93.7

TABLE VIII.—*Ratio and percentage of exclusion arranged in order of ratios*

County (a)	Ratio (b)	Percentage of exclusion (c)
Colusa	16.6:1	94.0
Orange	15.8:1	93.7
Monterey	13.9:1	92.8
Fresno	11.5:1	91.0
Kern	9.7:1	89.7
Madera	7.1:1	85.8
San Joaquin	6.8:1	85.3
Los Angeles	5.1:1	80.2
San Bernardino	4.4:1	77.1
Santa Barbara	3.9:1	71.6
Riverside	3.7:1	62.8
Alameda nominees	3.6:1	72.5
Tulare	3.4:1	70.3
Imperial	3.1:1	67.9
San Benito	3.0:1	66.7
Alameda	2.7:1	62.3
Kings	2.5:1	60.5
Ventura	2.3:1	57.1
Merced	2.2:1	53.7
Santa Clara	1.9:1	48.2
Yolo	1.8:1	45.4
INDIANS		
Inyo	5.5:1	82.0
Lake	∞	100.0

TABLE IX.—*Numbers of years in which percentage of Spanish-surname grand jurors was less, the same or more than percentage of Spanish-surname population*

County	Number of years in which Spanish-surname percentage of grand jurors was less than the Spanish-surname percentage of the population	Number of years in which Spanish-surname percentage of grand jurors equalled the Spanish-surname percentage of the population	Number of years in which Spanish-surname percentage of grand jurors exceeded the Spanish-surname percentage of the population.
(a)	(b)	(c)	(d)
Alameda	8	2	2
Colusa	10	0	0
Fresno	12	0	0
Imperial	12	0	0
Kern	12	0	0
Kings	12	0	0
Los Angeles	11	1	0
Madera	11	0	0
Merced	11	0	0
Monterey	7	0	0
Orange	11	1	0
Riverside	10	1	1
San Benito	12	0	0
San Bernardino	11	0	0
San Joaquin	10	0	0
Santa Barbara	11	0	1
Santa Clara	6	6	0
Tulare	11	1	0
Ventura	12	0	0
Yolo	5	2	0

TABLE X.—*Ambiguous Spanish-surnames and Christian names*

Included in study	*Eliminated from study*	*Eliminated from study*
Bello, Manuel	Adam, John F.	Miller, Raymond H.
Bernardi, A. J.	Adam, Leonard H.	Miller, Raymond H.
Haber, Martha B.	Adam, J. Donald	Miller, Mrs. Lucetta B.
Martin, Antonio M.	Bear, Robert G.	Miller, George W., Jr.
Miller, Herman M.	Boyer, Robert F.	Miller, Isabella
Spina, Rollo	Boyer, W. E.	Miller, Marie
	Boyer, Robert F.	Miller, George S.
	Bray, J. Allen	Miller, Jack J.
	Bruner, Sylvia Leland	Miller, Rita
	Bruno, Henry A.	Miller, Mrs. Ann R.
	Bruno, Henry A.	Miller, Horace
	Bruno, Henry A.	Miller, Albinus R.
	Bruno, Armand R.	Miller, Ralph E.
	Daniel, Myrtle	Miller, Mrs. L. F.
	Faure, Emile	Miller, George A.
	Fox, Joseph R.	Miller, Harold E.
	Fox, John A.	Miller, Robert G.
	Gabriel, Donald L.	Miller, Wilbert B.
	German, Mildred	Moeller, Beverly
	Giles, Charles F. "Bird"	Muller, James
	Jordan, R. E.	Muller, Otto F.
	Levin, Richard	Nagel, Edwin T.
	Martin, Alice	Noble, M. L.
	Martin, Carl	Noble, Cornelius C.
	Martin, Edward E.	Paul, Paul
	Martin, Katherine	Prince, Clarence E.
	Martin, Robert D.	Prince, Clarence E.
	Martin, Franklin J.	Savage, Keith W.
	Martin, S. R., Rev.	Savage, J. N.
	Martin, Robert	Simon, Carl E.
	Martin, Cecil	Simon, Carl E.
	May, Lawrence L.	Simon, Nathan A.
		Tobias, Sam

UNIVERSITY OF CALIFORNIA, IRVINE,
DEPARTMENT OF PSYCHOLOGY,
DIVISION OF SOCIAL SCIENCES
May 24, 1968.

DON B. KATES, Jr., Esq.,
California Rural Legal Assistance,
257 South Spring Street,
Los Angeles, California 90012.

DEAR MR. KATES: I have analyzed the data you sent me on grand jurors of Spanish surname for several California counties. In order to make perfectly clear what I have done, I review herewith the scientific conventions I have utilized to draw my conclusions.

The basis for these conputations (although I use a somewhat more general and straightforward algorithm) is described in Michael O. Finkelstein, "The Application of Statistical Decision Theory to the Jury Discrimination Cases," *Harvard Law Review* 80 (December, 1966), pp. 338–376. Essentially, it consists of using conventional statistical methods to compute the proportion of people with Spanish surnames who must be disqualified in order to account for the observed numbers of jurors with Spanish surnames.

The standard procedure for arriving at conclusions by statistical methods is called, as you probably know, "hypothesis testing." This is done by assuming something to be true and deducing the likelihood of observing any given outcome on the basis of that assumption. If the likelihood (according to that assumption, or "null hypothesis") of observing what *actually has* been observed is sufficiently *low*, we conclude that the assumption is false: "rejecting the null hypothesis," we accept its contrary. It is conventional in natural and social science to reject null hypotheses which have probabilities of less than one in twenty of yielding the observed data. Thus, "type I error" (i.e.—in this application—error of which the state, rather than the plaintiff, has standing to complain, *viz.* a finding of discrimination where there is none in fact) occurs one in twenty times.

The null hypothesis in the case at hand is that every person in some population is equally likely to be on a grand jury. (This population is the population of *eligibles;* it is all residents of the county not legally disqualified by virtue of age, transience, or any other characteristic. I am not qualified to state how nearly it is the total adult population.) If this is the case, it is easy to see that if p% of the eligible population have Spanish surnames, 95% of the samples of N grand jurors will have at least $p-1.645[p(100-p)/N]^{1/2}\%$ members with Spanish surnames, since $[p(100-p)/N]^{1/2}\%$ is the standard error of the proportion.

From this observation, all that is necessary is to estimate p from the data, add to it 1.645 times its standard error, and we have THE LARGEST PERCENTAGE OF ELIGIBLES HAVING SPANISH SURNAMES CONSISTENT BOTH WITH THE ASSUMPTION THAT THERE IS NO DISCRIMINATION AND WITH THE OBSERVED DATA. Wherever the percentage of eligibles exceeds this figure, the conclusion that there is *de facto* discrimination is inescapable.

For example, from 1957–1968 inclusive (according to your data), 6 of the 228 grand jurors in Alameda County ($<2.63\%$) had Spanish surnames. The standard error is $[(2.63)(97.37)/228]^{1/2}=1.06$; multiplying by 1.645 and adding to 2.63, we get 4.37. Thus, the observed data for Alameda County grand jurors is inconsistent (''at the .05 level'') with the simultaneous assumptions (a) that there is no discrimination in Alameda County, and (b) that more than 4.2% of the eligible population of that county have Spanish surnames. Similarly, for the 627 *nominees* in Alameda County, 12, or 1.91%, had Spanish surnames. The standard error is 0.55, and the data would not arise more than once in twenty random selections from any population with more than $(0.55)(1.645)+1.91<2.8\%$ Spanish surnames.

The results of my computations appear in the attached table.

Yours truly,

JEROME KIRK, Ph. D.,
Assistant Professor,
Sociology and Social Science.

MAXIMUM SIZE OF SPANISH SURNAME
POPULATION CONSISTENT WITH ASSUMPTIONS OF NONDISCRIMINATORY GRAND JURY SELECTION—CALIFORNIA COUNTIES

County	N= Number of jurors	p=Percent of jurors with Spanish surnames	$s=\sqrt{\frac{P(1-p)}{N}}$*	y= p+1.645s*	Z=Percent of population with Spanish surnames	$E=\frac{100(Z-Y)}{Z-\frac{ZY}{100}}$
Alameda	228	2.6	1.1	4.4	6.9	38
Alameda (nominees)	627	1.9	0.6	2.8	6.9	62
Colusa	190	0.5	0.5	1.5	8.2	82
Fresno	228	1.3	0.8	2.6	14.1	84
Imperial	209	7.7	1.8	10.7	18.6	48
Kern	228	0.9	0.6	2.0	8.5	78
Kings	228	8.3	1.8	11.4	20.3	49
Los Angeles	248	1.6	0.8	3.0	7.9	64
Madera	209	1.9	1.0	3.5	13.0	76
Merced	209	6.2	1.7	9.0	12.5	31
Monterey	152	0.7	0.7	1.9	9.4	81
Orange	228	0.4	0.5	1.2	6.3	66
Riverside	228	3.5	1.2	5.5	9.1	42
San Benito	228	8.8	1.9	11.9	25.4	60
San Bernadino	209	2.4	1.1	4.3	10.4	61
San Joaquin	190	1.6	0.9	3.1	10.5	73
Santa Barbara	228	3.1	1.1	5.0	10.7	56
Santa Clara	228	5.7	1.5	8.3	10.9	26
Tulare	228	4.0	1.3	6.1	13.4	58
Ventura	228	5.7	1.5	8.3	12.7	38
Yolo	152	5.3	1.9	8.5	9.4	10

*s=the standard error of the proportion, computed from p.
y=the highest percentage of the population bearing Spanish-surnames which could yield so few jurors by random selection more than 95 percent of the time. (NB: This figure is rounded upward.)
E=the *minimum* percentage of the population of Spanish surname which must be excluded from eligibility in order to make the observed number of jurors (or less) as likely from a random selection as .05. This figure is 100 when discrimination is total; 0 when there is none.

P.S.:

It is also possible to use these figures to compute an index of the degree of discrimination practiced in the various counties.

I have tabulated an index, E, which takes on the value of 0 or below whenever the data fail to demonstrate discrimination and rises to 100 when no Mexican-Americans at all are selected for juries from a population which contains Mexican-Americans. This figure may usefully be thought of as a percentage, and is computed in the following way:

Under nondiscriminatory conditions, every eligible person is equally likely to be selected. This is the statistician's definition of *randomness*, and the procedure may be thought of as perfectly analogous to drawing names out

of a hat. There are several ways to discriminate, when drawing names from a hat. Certain names could be discarded after drawing. To represent discrimination against a *group*, however, we could assume that some proportion of that group's slips simply *never get put in the hat*. Actually, of course, it doesn't matter what the procedure of discrimination is, but the virtue of this metaphor is that by assuming that discrimination is practiced prior to drawing we may ask the simple question, "what percent of the group's names are never put in the hat?"

Suppose E/100 is the proportion of Mexican-Americans who are excluded from the process before the beginning of a truly random selection. (I divide by 100 so that E will be a percentage, rather than a decimal.) If Z/100 is the proportion of the population who are Mexican-American, then EZ/100 is the *percentage* of the whole population who are excluded Mexican-Americans. Let X/100 be the proportion of Mexican-Americans on the jury. This then is the ratio of non-excluded Mexican-Americans to non-excluded people of all groups, or

$$\frac{X}{100}=\frac{Z-\frac{EZ}{100}}{100-\frac{EZ}{100}}, \text{ so } E=\frac{100(Z-X)}{Z-\frac{ZX}{100}}$$

We do not actually know X, nor is it probably true that no *non*-Mexican-Americans are excluded from consideration (this latter is a conservative assumption, for if others are excluded, our E is too small). We could, of course, make an estimate from the experience of 1957–68. In San Joaquin County, e.g., 1.6% of the 190 *jurors* during this period had Spanish surnames, while 10.5% of the *population* had Spanish surnames. Thus, we could estimate the extent of *de facto* discrimination in San Joaquin County to be

$$\frac{100(10.5-1.6)}{10.5-\frac{(10.5)(1.6)}{100}}=83+\%$$

Statistically speaking, this is the best estimate we can make for the extent of discrimination in San Joaquin County. Furthermore, it is conservative, as mentioned above, since the true denominator of the fraction is bound to be smaller if any other kinds of *de facto* discrimination occur in San Joaquin County. Yet, the data do not actually satisfy scientific canons of *proof* that as much as 83% discrimination occurs, for our figure of 1.9% might be low by chance, rather than policy.

The figure of 3.1%, however, represents the *highest* proportion of Mexican-Americans who might be selected *in the long run*, despite the (presumably accidental) "short-run" (twelve-year) data in hand. Using this figure instead of 1.9, we obtain E=73%. We *can* assert with confidence ("of 0.5," in statistical jargon) that there is *at least* 73% discrimination in San Joaquin County.

This number is lower than 83% by virtue of our degree of uncertainty. That is, had we a sample of 228, rather than 190 jurors, we would be slightly more certain that the 1.9% is an "accurate" figure (in the sense of representing the very long run). We would, from a fast calculation, have a Z of 2.8%, instead of 3.1%, which would yield E=76%. This caveat is relevant to direct comparison of counties according to the E in the attached table. It is well to remember that while some of these figures may be only a few percentage points too low, others may be 20, 30, or more points lower than the (best) estimate computed from X=p, rather than X=Z. Nevertheless, it appears from these figures that Fresno, Colusa, Monterey, and perhaps Kern and Madera, counties somehow engage in a great deal of discrimination, relative to the state as a whole, while Yolo, Santa Clara, Merced, and perhaps Ventura and Riverside practice relatively random selection of jurors.

UNIVERSITY OF CALIFORNIA, IRVINE,
DEPARTMENT OF PSYCHOLOGY,
DIVISION OF SOCIAL SCIENCES,
June 10, 1968.

CAROL RUTH SILVER,
Attorney at Law, California Rural Legal Assistance,
257 South Spring Street,
Los Angeles, California 90012

DEAR MISS SILVER: This is in response to your telephoned request that I reconcile my computational procedure with that of Finkelstein. (I take the relevance of the precedent to be the mathematical procedure, rather than the details of arithmetic, of course.) Although I used a slightly more general computational sequence than he, the principle is identical. To indicate this, I herewith use my method to generate figures parallel with his (particularly his "Table I"). (They are of course not identical, since he and I are working from different raw data.)

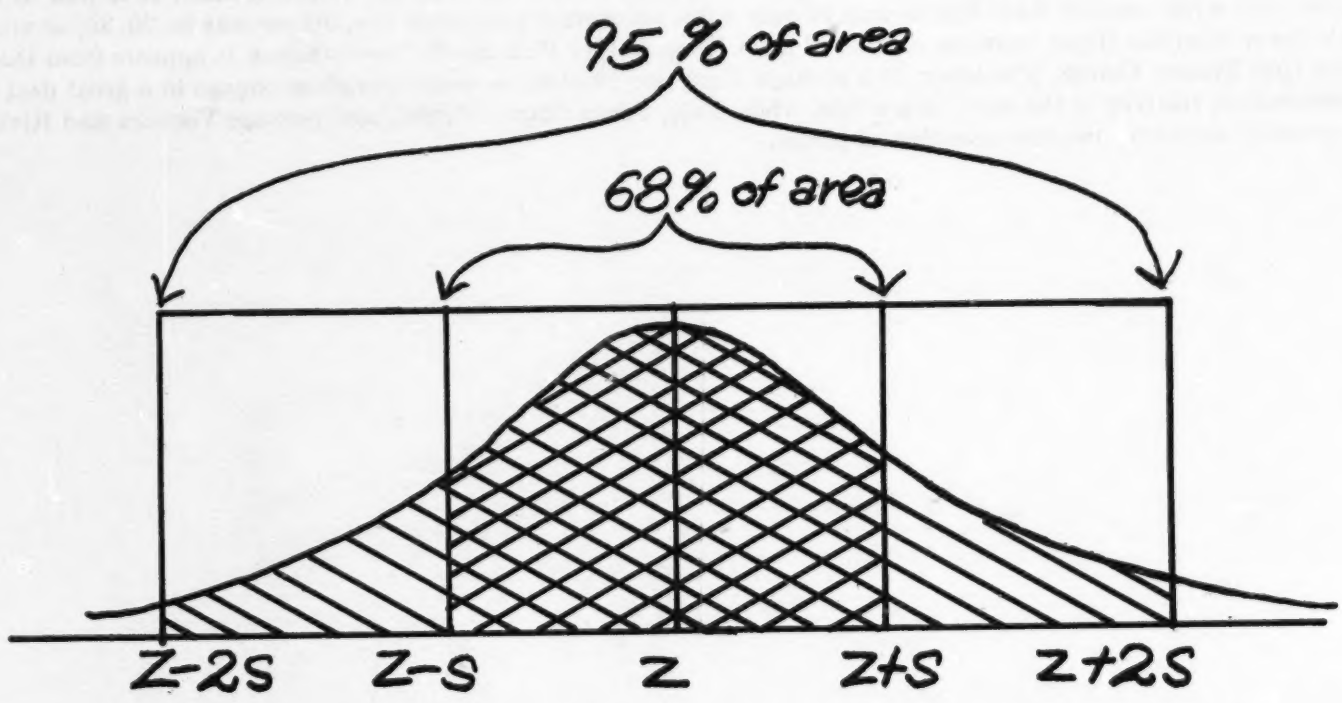
If a proportion z of the population have Spanish surnames, the probability of any randomly chosen member having a Spanish surname is, of course, z. For a sample of any given size, the most likely proportion of the sample to have Spanish surnames is also z. Of course, the larger the random sample, the more surprised we would be if our result differed much from z.* It can be shown that the "standard deviation" of an independent random sample of size N is

$$s=\sqrt{\frac{z(1-z)}{N}}$$

for large N. This "standard deviation" is a convenient figure which tells us *how much* different from z we expect the actual data to be. If we were repeatedly to draw samples of size N from such a population, about two-thirds of those samples would have between $z-s$ and $z+s$ proportion of Spanish-surname members. About 95% of them would have between $z-2s$ and $z+2s$ proportion of Spanish-surname members (see figure). Mathematically speaking, a proportion

$$\sqrt{\frac{N}{2\Pi z(1-z)}}\int_a^b e^{\frac{-N(x-z)^2}{2z(1-z)}}dx$$

of randomly chosen samples would have proportions of Spanish-surname members between a and b. (The integral expression is merely a shortcut device to arrive at Finkelstein's final figure, which takes advantages of the relatively large sample sizes involved to render unnecessary the approximation he uses on p. 358.)



*That is, if we got three or four heads in a row in tossing a coin, we wouldn't be too surprised. But if we tossed it a hundred times and only got half a dozen tails, we would strongly suspect that the coin was rigged, somehow.

Thus, for a given proportion of the population, z, bearing Spanish surnames, we can compute the likelihood of choosing randomly N consecutive jurors with as few as Np of them having Spanish surnames. For N=228, for instance,

A	B	C	D
Probability of choosing a single M–A juror, z	$s=\sqrt{\frac{z(1-z)}{228}}$	p(v<6) (2.6% of 228) Probability of choosing 228 consecutive jurors, fewer than seven of whom are M–A	p(v<10) (4.4% of 228) Probability of choosing 228 consecutive jurors, fewer than eleven of whom are M–A
		Percent	*Percent*
0. 100	0. 0199	<0. 01	0. 4
. 075	. 0174	0. 2	3. 8
. 060	. 0157	1. 5	15. 4
. 050	. 0145	4. 9	34. 1
. 040	. 0129	13. 8	62. 2
. 035	. 0122	27. 0	77. 0
. 030	. 0113	36. 3	89. 2
. 025	. 0103	54. 0	96. 7
. 020	. 0096	73. 2	99. 4
. 010	. 0066	99. 2	>99. 99

For p=2.6%, the table shows that the value p(v) passes from less than the magic number 0.05 to more than 0.05 as z gets down to a bit over .050. For p=4.4%, this occurs as z gets to about .070. Thus, if 4.4% of 228 jurors have Spanish surnames, we would conclude that discriminiation exists whenever the population contains more than 7% such surnames; if 2.6% of the jurors have Spanish surnames (as in Alameda County), we conclude that there is discrimination since the population contains more than 5+%.

What I did was this same thing backwards. Rather than begin with z, estimate s as a function of z, and figure the *lowest* percentage of *jurors* consistent with z, I began with p (an exact figure, not subject to the caveat about children being included), computed s from p, and figured the *highest* percentage of the *population* consistent with p. To see that these are the same, all we need to do is note that, in 95% of the cases, *p will be more than 1.645s less than z.* (s is *defined* in such a way as to make this true. Figuring from the fourth row of the table, z=.050, z−1.645s=.050 (1.645) (.0145)

=.050−.024

=.026

And indeed, this figure, .026, is the value of p for which p(v) gets down to .05 for that z. All this is simply to say that it makes no difference whether we say that

$$p>z-1.645s \text{ or } z<p+1.645s$$

because, by adding 1.645s to both sides of this inequation, we can derive the second from the first.)

One minor point: estimating s from z will give a slightly higher figure for the standard error than estimating it from p. For Alameda County, there is a relatively large discrepancy, so that is a good example:

$$s=\sqrt{\frac{p(1-p)}{N}}=1.05\%$$

$$s=\sqrt{\frac{z(1-z)}{N}}=1.68\%$$

Multiplying these figures by 1.645, the first would permit a discrepancy due to chance of 1.7%, while the second would permit a discrepancy due to chance of 2.8%. Since, however, the actual discrepancy between p and z is 4.3%, this sort of minor refinement is unimportant. (In principle, using the larger figure, z, would be more conservative, but in logic, p makes more sense.)

Let me know if you need any further clarification.

Yours truly,

JEROME KIRK, Ph. D.,
Assistant Professor,
Sociology and Social Science.

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